DOCUMENT RESUME

ED 124 224 JC 760 305

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|---|---|
| AUTHOR | Mortimer, Kenneth P., Ed. |
| TITLE | Faculty Bargaining, State Government and Campus Autonomy: The Experience in Eight States. Report Number 87. |
| INSTITUTION | Education Commission of the States, Denver, Colo.; Pennsylvania State Univ., University Park. |
| SPONS AGENCY | Lilly Endowment, Inc., Indianapolis, Ind. |
| PUB DATE | Apr 76 |
| NOTE | 115p. |
| AVAILABLE FROM | Education Commission of the States, 1860 Lincoln Street, #300, Denver, Colorado 80203 ($4.00 plus $.35 postage and handling, prepaid) |
| EDRS PRICE | MF-$0.83 HC-$6.01 Plus Postage. |
| DESCRIPTORS | Centralization; *Collective Bargaining; Colleges; Educational Trends; *Post Secondary Education; *Power Structure; *State Government; *State Legislation |
| IDENTIFIERS | *Autonomy; State Institutional Relationship |

ABSTRACT

This monograph compiles eight papers discussing faculty collective bargaining experiences in eight different states. Part I contains articles on four states where faculty collective bargaining was in existence before 1971: Michigan, New Jersey, New York, and Pennsylvania. Part II includes discussions of some more recent experiences in Hawaii, Massachusetts, Alaska, and Montana. Most of the papers cover three basic topics: the nature and scope of bargaining legislation, the organization of state government and the structure for collective bargaining in the state, and the nature of systemwide-campus authority relations under collective bargaining. The data bases on which the papers rest vary considerably and are related to the amount of experience a state has had with faculty bargaining. A summary paper compares the experiences in the individual states, identifies major patterns in state-institutional and system-institutional authority relations as associated with faculty collective bargaining, and puts forward six propositions which summarize the factors that are associated with the degree of centralization that occurs under collective bargaining.
(Author/NHM)

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JC 760 305

# FACULTY BARGAINING, STATE GOVERNMENT AND CAMPUS AUTONOMY

## The Experience in Eight States

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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A Joint Publication of
The Pennsylvania State University
and
The Education Commission of the States

April 1976
Report Number 87

ducation Commission of the States

FACULTY BARGAINING, STATE GOVERNMENT AND CAMPUS AUTONOMY:

THE EXPERIENCE IN EIGHT STATES

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A joint publication of
The Pennsylvania State University
and
The Education Commission of the States
Higher Education Services Department
Richard M. Millard, Director

Report No. 87
April 1976

Partial funding for this book
was provided with a grant from
LILLY ENDOWMENT, INC.

Copies of this publication may be ordered from
The Education Commission of the States,
1860 Lincoln Street, #300
Denver, Colorado 80203
Wendell H. Pierce, Executive Director

Prepayment of publication orders is required.
For each copy of this book, please enclose
$4.00 plus $.35 postage and handling

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## PREFACE

Collective bargaining is a relatively new phenomenon in public higher education, and experiences with the actual bargaining process and its attendant implications have been limited. In only a few states, public postsecondary institutions have operated under bargained agreements, with or without state legislative sanction, for a reasonably significant period of time. For this reason, solid evaluations of the impact of postsecondary education collective bargaining have been few in number and limited in scope.

This report is also limited, dealing only with state-institutional relations in eight states, but it is hoped that it will add to the general body of knowledge in the area.

The Education Commission of the States (ECS) is indebted to Kenneth P. Mortimer of the Pennsylvania State University for his foresight in originally suggesting publication of the book, and for his editorial competence in pulling together the various papers that comprise it. Doris Ross of the ECS Research and Information Services Department served as coordinator for the book, and was assisted in this by Nancy M. Berve of the Higher Education Services Department.

Each author has graciously contributed, without charge, his section of the book.

ECS wishes to express deep appreciation to Lilly Endowment, Inc. which provided a grant that made publication of this book possible. Additional funding was provided by the Pennsylvania State University as co-publisher of the book.

The observations and judgments in these papers are those of the individual authors, and do not necessarily reflect ECS policy on collective bargaining in public higher education.

Richard M. Millard, Director
Higher Education Services Department
EDUCATION COMMISSION OF THE STATES

## EDITOR'S INTRODUCTION

This monograph is a beginning effort to identify and describe the major patterns in state-institutional and system-institutional authority relations that are associated with faculty collective bargaining. Approximately 80-85 percent of faculty bargaining activity is regulated by state statutes in which there is considerable variability. This variability is made more complex by the different adjustments that several states and institutions have made in their approaches to faculty bargaining.

Since its beginnings in the mid-1960s, faculty collective bargaining has grown to the point where, in 1975, faculty at approximately 450 campuses have chosen a union. This represents approximately 15 percent of the institutions in the country.

There are several features about this development that will help to focus attention on the subject of this monograph: state-institutional and system-institutional relations under faculty collective bargaining in the various states.

First, approximately 85 percent of the institutions with faculty unions are in the public sector. Although in 1970 the National Labor Relations Board extended its jurisdiction to include private higher education, the faculty at only 50 private institutions now have taken advantage of the opportunity to organize.

Second, approximately two-thirds of the organized institutions are community colleges and another 15 to 20 percent are former state teachers' colleges or emerging universities. Collective bargaining has not made significant inroads into the major research universities.

Third, most of the activity in faculty bargaining has taken place in those states with permissive collective bargaining legislation. There are approximately 17 or 18 states with omnibus public employee bargaining laws that apply to postsecondary faculty, and another three states in which the legislation applies to the faculty of two-year but not four-year colleges. These laws typically guarantee public employees the right to organize and require management to bargain in good faith. The product of this good-faith bargaining is a legally binding agreement. Another important feature of most of these laws is that they provide a framework for the settlement of disputes that may include binding arbitration, mediation and the power for labor relations boards to determine unfair labor practices.

In the early years of faculty bargaining, from 1968 through 1971, most of the activity was clustered in relatively few states such as New York, New Jersey, Pennsylvania, Rhode Island, Massachusetts, Delaware, Michigan, Wisconsin, Washington and Hawaii. In 1973, 1974 and 1975, the activity spread to a host of other states including Maine, Vermont, Connecticut, Florida, Ohio, Iowa, Illinois, Montana, California, Oregon and Alaska.

Because most of the faculty bargaining activity is regulated by state statutes or local understandings, it has been difficult to codify the experiences of the various states with this new phenomenon. The casual observer has great difficulty in making sense out of this variability.

## Editor's Introduction

In order to compare the experiences in several states, a series of papers was prepared for a symposium presented at the April 1975 American Educational Research Association meetings. The papers covered state-institutional authority relations under collective bargaining in five different states: New Jersey, New York, Pennsylvania, Massachusetts and Hawaii. A summary paper was prepared to identify what patterns might be common to the experiences in these five states.

In the summer of 1975, the editor approached the Education Commission of the States (ECS) with a proposal to make these papers more widely available. At that point and early in the fall of 1975, papers on the experiences in Michigan, Alaska and Montana were added to comprise the eight states analyzed in this monograph.

Most of the papers in the monograph cover three basic topics: the nature and scope of bargaining legislation, the organization of state government and the structure for collective bargaining in the state, and the nature of systemwide-campus authority relations under collective bargaining.

There is considerable variability in the collective bargaining laws covered in these eight papers. For example, the board of regents is defined as the employer in Hawaii's statute, whereas no mention of the public employer is made in the Pennsylvania and New Jersey statutes. The Hawaii, Pennsylvania and Alaska statutes do not prohibit strikes by public employees, and both the Pennsylvania and Hawaii statutes have strong management rights clauses that do not require that management bargain on certain "inherent managerial rights."

The second topic, the organization of state government and structure for collective bargaining covers the extent of faculty bargaining activity in the state and how it has been handled. In Michigan, there is no statewide structure for collective bargaining whereas in New York and New Jersey the bargaining for certain sectors of postsecondary education is conducted by the state's office of employee relations.

Each paper also considers the extent to which campus autonomy is affected by systemwide collective bargaining. In the Massachusetts State College system, the tradition has been to bargain individually with each campus whereas the entire State University of New York's faculty bargaining is done through a central mechanism.

The data base on which the papers rests varies considerably and is related to the amount of experience a state has with faculty bargaining. The papers on New Jersey, the State University of New York, Pennsylvania and Massachusetts are the results of research conducted by the authors in these separate states. The paper on Hawaii is the result of the senior author's experience as the university's chief spokesman at the bargaining table and the junior author's experience as a researcher and interviewer in Hawaii.

Ray Howe's paper on Michigan and Tom Emmet's paper on Alaska and Montana are based on their experience with faculty bargaining in those states. In all cases, of course, relevant statutes, labor board decisions and other documents were available for analysis.

## Editor's Introduction

The summary paper by William Weinberg attempts to compare the experiences in the individual states. It concludes with six propositions that appear to reflect the experience to date.

Finally, these papers are accurate through September 1975. Where subsequent information was available, it was incorporated into the test. Collective bargaining is changing so rapidly, however, that some of the details reported here may have been modified by subsequent events.

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# PART I

## THE EXPERIENCED STATES:

## MICHIGAN, NEW JERSEY, NEW YORK AND PENNSYLVANIA

# THE MICHIGAN EXPERIENCE

# WITH

# FACULTY COLLECTIVE BARGAINING: 1965-1975

by

Ray A. Howe
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## Introduction

Michigan's experience with formal faculty collective bargaining dates back to the enactment of Public Act 379 in 1965. Few, if any, observers saw the act, which was an amendment to the existent Hutchinson Act, as having either immediate or projected impact for colleges and universities. Michigan was one of the seven states that authorized collective bargaining for public employees that year, but only one state, Wisconsin, had so provided prior to 1965.

This paper examines one aspect of a range of complex experiences under ten years of faculty collective bargaining in Michigan. Specifically, it seeks to explore the ways and extent to which state-institutional authority relationships have been altered or affected. It begins with a brief description of higher education in Michigan and then discusses some of the salient features of Act 379. A section on collective bargaining activity, which includes a discussion of strikes, is followed by an assessment of the impact of governmental agencies on higher education and the collective bargaining process. The paper concludes that, to date, collective bargaining has not significantly altered state-institutional authority relations in Michigan.

## Higher Education in Michigan

Michigan's "system" of public higher education is composed of 13 four-year colleges or universities and 29 two-year colleges. One of the former is a multi-campus institution with two distinctive branches, and two of the community colleges are also multi-campus. Of the universities, three have been singled out in the state constitution as corporate bodies: The University of Michigan, Michigan State University and Wayne State University are also endowed, although in the 1964 revision of the state constitution, "other institutions established by law" are unspecified.

The state board of education is granted "leadership and general supervision over all public education . . . except as to institutions of higher education granting baccalaureate degrees . . ." over which it functions as a general planning and coordinating body and as an adviser to the legislature concerning financial requirements. While there is state funding of the community colleges, each college is expected to provide a local tax base as well. Michigan has traditionally inclined to a laissez-faire system of coordinating higher education with only occasional fluctuations of emphasis in this regard.

Public Act 379

Neither designed by or for education, but rather a product of the initiative of other elements within public employment, P.A. 379 was enacted by a Democratic legislature and signed by a Republican governor. It was a comprehensive public employment law, with no specific reference to any level of education, including postsecondary. The inhabitants of the more elevated groves of academe rather blithely assumed the implications of the bill for higher education to be extremely remote.

Indeed, the omen for elementary and secondary education was far from recognized or appreciated. Neither the Michigan Education Association (MEA) nor the Michigan Federation of Teachers (MFT) sponsored or promoted the development, although belated and ineffective gestures were made to modify the act once its passage was perceived as assured. The MEA for the most part fell back on the assertion of its current executive secretary that principles and practices that might be applicable to private employment were not appropriate to public employment.

Because collective bargaining requires the election of a single exclusive agent, the MFT worried that many of its locals, which were in a minority status in most locations, would be wiped out by larger unions. Philosophically, of course, the MFT, the state organ of the American Federation of Teachers, endorsed the principle, the desirability and the propriety of collective bargaining for teachers.

The statute followed the model of the National Labor Relations Act although not entirely, as issues of the succeeding decade have revealed. A labor relations board of three members, now designated as the Michigan Employment Relations Commission (MERC), already in existence was endowed with specified responsibilities and powers related to the public sector to designate appropriate units; conduct bargaining elections; certify and decertify sole and exclusive agents; provide for mediation and fact-finding services; pass upon unfair labor practice charges; to issue appropriate orders; and to act as the agent of the state to monitor the ongoing phenomenon.

The right to strike was denied to public employees and the definition of a strike was as explicit and as comprehensive as a law could manage.

One aberration of P.A. 379 was duly noted, but long neglected. While there was a reasonably complete enumeration of unfair labor charges by employers, absolutely none were listed for employee organizations.

The law was given immediate effect, and the labor relations board was charged with responsibility for all labor relations in both private and public employment without distinction. The labor relations board was not, however, endowed with any additional resources, financial or staff, to cope with the suddenly added burdens, nor was the current staff, experienced as it was in the institutionalized processes of labor relations in the private sector, prepared in any way to different mindsets, perceptions, levels of sophistication or problems that loomed ahead in the public sector.

It is somewhat ironic that despite its relative lack of involvement in the formative stages, the most immediate and prevalent invocation of the collective bargaining opportunities afforded under the act was within education. From the outset, higher education was directly involved, principally, in the early years through activity in the community colleges.

Little or no attention was given by the legislature to the complications and confusions attendant to living with its labors. Each public employer was left to his own devices to meet the new order of things and, indeed, such is substantially still the case ten years later. No clearer example exists of the doctrine of laissez faire.

Collective Bargaining Activity

Community Colleges: In 1965-66, several community college faculties undertook and achieved recognition and bargaining agent status and the administrations of those institutions prepared in a somewhat haphazard and, in retrospect, hapless way, to meet them.

To Henry Ford Community College (Dearborn) goes the honor of achieving the first bona fide collegiate faculty collective bargaining contract, in the early fall of 1966, but to HFCC as well goes the dubious distinction of being the first institution to endure a strike related to legally endowed collective bargaining. These "famous firsts" however were not restricted to the State of Michigan. They were, in fact, in each instance, the first in the nation.

It was quite apparent at this early date that the legal prohibition of strikes notwithstanding, the principal burden of dealing with work stoppages lay with the institution. In relatively short time, the courts were to add a new inhibition to the capacity for success.

When injunctive relief was sought, it was established that the mere fact of failure to report for work was insufficient to assure the support of the court in ordering a return to work. It has to be established by the institution seeking an injunction either that the public order and safety was thus violated, or that the institution had suffered irreparable harm. Even when court orders were handed down, there was little assurance that its directed effect would be implemented since little practical muscle was provided to back up the orders of the court. Only very recently has a striker been sent to jail for a short period for violation of a court order, and then only when on re-hearing the offender declined either to apologize or to concede error. Further, the courts have indicated that if and when union leaders do relay court orders to their membership and recommend compliance, the refusal of the membership to comply cannot be held as prima-facie evidence of the leadership's lack of responsibility.

One two-year institution, Lake Michigan College, presided over by a former union officer, did, in fact, fire its entire faculty for striking. The case proceeded through mazes of litigation and the institution underwent numerous stresses and strains as a consequence.

Organization of the state's community colleges continued apace and today 25 of the 29 such institutions are involved in collective bargaining. The appendix cites identities and affiliations (see Table I).

While the number of strikes in Michigan higher education has not been great, two significant observations can be made:

1. It appears evident that legislative prohibition of strikes cannot be regarded as the eliminator or perhaps even the inhibitor of strikes.

2. Each institution that is confronted with a strike is left substantially to its own devices to deal with it.

Indeed the latter point has validity in respect to almost every aspect of collective bargaining in Michigan. The college or university administration must either develop or acquire its own representatives, with little prospect of any outside help. Torn initially between the options of an outsider knowledgeable of the process, or an insider intimate with the institution, most colleges incline to call upon labor lawyers to represent them at the bargaining table. As the years of experience progressed, however, there has been an increasing tendency to rely on a staff member with sole responsibility to the chief executive of the institution for the labor relations of the one particular college. The faculties, for the most part retaining a state and/or national affiliation, increasingly have negotiated only with representatives of their own campus at the table. Bargaining has thus become, in effect, an internal affair.

Four-Year Colleges and Universities: In 1969, Central Michigan University (Mt. Pleasant) pioneered the national intrusion of collective bargaining on senior institutions of higher learning and was soon joined by Oakland University. In the years thereafter, several state universities, including Wayne State University, Western Michigan University, Eastern Michigan University and Ferris State College have followed suit. Northern Michigan University, which rejected collective bargaining in its first election, succumbed in its second. Michigan State University's faculty did undertake a vote regarding collective bargaining, but rejected it by a substantial margin due in part to a spirited "educational" campaign by the university administration. Several other colleges have similarly declined when an election was held.

The University of Detroit, a private church-related institution, has twice voted on and rejected collective bargaining, one of the few universities in the country to do so. Today the phenomenon encompasses public community colleges, four-year public colleges and universities, and private institutions of higher education. A total of 35 colleges are currently involved (see Table I).

## Governmental Agencies and Collective Bargaining

Higher education institutions in Michigan have undergone virtually all the experiences that the collective bargaining process provides: negotiations, mediation, fact finding, arbitration, strikes and the attendant litigation.

The litigation began soon after the enactment of P.A. 379. The University of Michigan unsuccessfully sought declarative exemption from the law as a consequence of its constitutional status. The attorney general's opinion of November 23, 1965, which held that the universities were subject to the act, was unacceptable and appeared to the institutions to require vigorous challenge.

This challenge was time and energy consuming, but a tone was being set for higher education even as the case was studied by the judiciary. The Governor's Advisory Committee on Public Employee Relations advised the governor after over six months of study that:

TABLE I

FACULTY COLLECTIVE BARGAINING ACTIVITY IN MICHIGAN AS OF FALL 1975

| 4-Year Colleges | 2-Year Colleges |
|---|---|
| **American Association of University Professors** | |
| Eastern Michigan University | None |
| Northern Michigan University | |
| Oakland University | |
| Wayne State University | |
| Western Michigan University | |
| **National Education Association** | |
| Central Michigan University | Alpena Community College |
| Detroit College of Business | Bay de Noc Community College |
| Ferris State College | Charles Stewart Mott Community College |
| Saginaw Valley College | Glen Oaks Community College |
| | Gogebic Community College |
| | Jackson Community College |
| | Kalamazoo Valley Community College |
| | Kellogg Community College |
| | Kirtland Community College |
| | Lansing Community College |
| | Mid-Michigan Community College |
| | Monroe County Community College |
| | Montcalm Community College |
| | Oakland Community College |
| | St. Clair Community College |
| | Schoolcraft College |
| | Southwestern Michigan College |
| | Washtenaw Community College |
| **American Federation of Teachers** | |
| None | Henry Ford Community College |
| | Highland Park Community College |
| | Lake Michigan College |
| | Wayne County Community College |
| **Independent Agents** | |
| University of Michigan (teaching assistants) | Grand Rapids Junior College |
| | Macomb County Community College |
| | West Shore Community College |
| **"No Agent" Votes** | |
| Albion College | None |
| Grant Valley State College | |
| Lawrence Institute of Technology | |
| Michigan State University | |
| Northern Michigan University | |
| University of Detroit (2) | |

> "...we express no opinion on the question whether the universities may be subjected to the act, an issue now in litigation. It is our belief, however, that every constitutionally exempt state agency should nevertheless, on its own motion and as a matter of its own internal 'litigation,' adopt and apply, with respect to its employees, the basic principles concerning rights of unionization embodied in this act... We think that neither the civil service system employers (or commission) nor the universities are sufficiently distinguishable from other public employers in terms of their relations with their employees, or otherwise, to justify a refusal by any of them to accept and apply the policies adopted by the legislature with respect to public employers generally."[1]

In its concluding recommendations, the committee repeated, reinforced and expanded upon this value judgment to include its specific support for exclusive recognition and collective bargaining. It did, however, indicate that, if declared constitutionally exempt, universities might prefer, without any sacrifice of the principles the committee espoused, to establish its own procedures for implementation of these rights, independent of the State Labor Mediation Board.

In its narrative the committee specifically rejected the argument that the "special nature" of higher education justified special treatment in the formulation of its labor relations policies. The committee's forewarning was either not recognized, a situation made understandable by the fact that the committee report was neither broadly disseminated nor highly publicized, or was recognized too late to do very much about it.

The extensive commitment of elementary-secondary districts to collective bargaining seemed to observers in higher education to have borne economic fruit. One study of the first two years of Michigan's collective bargaining experience indicated that whereas annual increases in the districts studied had, in the five years preceding bargaining, approximated three percent, in the first two years of bargaining the average annual increase was three times as large, about nine percent.[2]

The lesson was not lost on academics, especially when some four-year college faculty saw the increased salaries of some of the two-year college faculty who had embraced collective bargaining. As the interests of collegiate faculty were being aroused, the developments emanating from judicial circles tended to set any administrative sense of balance spinning.

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[1] Advisory Committee on Public Employee Relations, Report to Governor George Romney, Feb. 15, 1967, pp. 6-7.

[2] Charles M. Rehmus and Evan Wilner, The Economic Results of Teacher Bargaining: Michigan's First Two Years (Ann Arbor, Mich.: Institute of Labor and Industrial Relations, 1968).

The concept of agency shop emerged from the practice of bargaining at the K-12 level. Under an agency shop agreement, a faculty member is not obliged to be a union member to become employed, nor is he/she required to join the union to retain employment status. However, it is demanded that he/she contribute to the union a fair share of the cost of representation, usually defined in practical terms as an amount equivalent to union dues. The agency shop concept was not mandatory but it could be negotiated. That meant the employer must agree to it, usually as a quid pro quo. Thus, it became a part of the master contract.

If an individual failed to meet the obligations of agency shop and was duly notified of such failure by the union and still declined, the union could then notify the employer of this presumably deliberate default and call for the dismissal of the individual at a time and in a manner prescribed by the terms of the agreement. The employer was then obligated to comply.

Obviously the concept was controversial and it was challenged. The first phase of determination was a somewhat stunning setback for the defenders of traditional conceptions of academic freedom and tenure. The State Tenure Commission ruled that failure to fulfill one's requirement under agency shop was sufficient "just cause" for proper dismissal, a distinct liberalization of the previous narrowly constructed interpretation of "just cause" as a matter related solely to the fulfillment of one's professional responsibilities.

The State Tenure Commission's jurisdiction in respect to higher education is very limited, being reserved to those few remaining community colleges in the state that are still part of a public school district. But the previous definitions of "just cause" by the commission had been compatible with collegiate concepts and this apparent deviation of interpretation caused no little concern. Meanwhile, the lower courts upheld the legality of the negotiation of the agency shop under P.A. 379, which had been similarly challenged. These decisions were, understandably, appealed. After lengthy delay, the state Supreme Court ruled in 1972. A presumably liberal court found that the agency shop was not provided for under existent Michigan statutes and was, in consequence, illegal.

The next session of the legislature in 1973 speedily filled the void. It provided, via amendment to P.A. 379, for negotiation of an agency shop provision with the so-called service charge not to exceed an amount equal to the dues charged a regular member. Persistent appellants were thus obliged to pursue the possibilities inherent in the allegation that they were deprived of their constitutional rights. Such issues have yet to be heard, much less resolved.

Another amendment to emerge in concert with this one was the provision of a general set of unfair labor practices for unions. Such an enumeration, however, has had subsequently little impact on the course of negotiations.

Earlier, an interpretation of the labor relations board of the state had furnished a new dimension to negotiations. In a 1968 case involving public school principals, it was declared that administrators recognized as supervisors did have the right to organize and bargain collectively regarding their own wages, hours and conditions of employment, provided they did so in bargaining units recognizably distinct from, even should they be organizationally related to, the units representative of those they supervised.

This departure from the parallel to the provisions of the National Labor Relations Act was decided upon because, while obviously the NLRA had been the pattern for P.A. 379, the legislature had not seen fit to include the prohibition of organization and bargaining by supervisory personnel. Therefore, it was deemed appropriate that they have such rights.

Not all administrative personnel were endowed with such rights. Top echelon administrators, who could be identified as having effective voice in the formalization of policy were exempted. In several colleges administrative (supervisory) bargaining units were formed and function in patterns only mildly distinguishable from faculty bargaining units.

In Michigan, as in other states, the lower or first echelon of administration, whether department chairman or division head in particularized collegiate settings, had long been controversial in questions of unit determination. The critical question was whether they were teaching faculty or administration. Resolution was accomplished by means of a case-by-case determination with the outcome determined not as a reflection of title or salary status, workload or even job description, but as a result of careful analysis of actual function.

The activity of the state has not been reserved solely to the judiciary. The executive and legislative branches of state government have been involved in faculty bargaining.

The governor's office has, from time to time, announced advisories concerning the proportions of "reasonable" salary adjustment patterns for the fiscal year. These have not been either prescriptive or definitive but to ignore them is to invite complicating factors when the institution comes to Lansing for its funding.

The legislature has intervened even more directly. In 1971, for example, a precise, comprehensive statement of minimum workload for university, four-year college and two-year college faculty was enunciated. Such an effort produced little practical effect on institutional patterns, but did evoke some litigation, more political pressure and much enraged outcry from within higher education, both administration and faculty. The following year it was quietly withdrawn.

During the academic year 1974-75, another issue was resolved by the Michigan Supreme Court, this time as almost a sidelight to a more direct and prominent question. The so-called Crestwood case decision, which addressed itself essentially to the question of procedural conflicts between the state Tenure Act and the Public Act 379, related to the firing of teachers who go on strike. The court found that teachers who do go on strike may be summarily fired by the governing board, which must then, after the fact, hold hearings for individual faculty members to determine if they have violated P.A. 379 by striking.

In addition, however, as a corollary matter, the Supreme Court ruled that those circuit courts that had, in instances of impasse, assumed the power to order or pressure the parties to binding arbitration of the issues in dispute had exceeded their legitimate authority and had no existent power to do so.

The 1975 legislature, already committed to the amendment of P.A. 379 as a foremost priority in that session, immediately accelerated both the pace and the intensity of the effort in order to endow the circuit court and/or the Michigan Employment Relations Commission with power to mandate binding arbitration if all other efforts of reconciliation of conflicting interests failed. After months of maneuvering in a legislature closely divided along partisan lines, a compromise bill legalizing faculty strikes but investing such powers for impasse resolution in circuit courts and/or MERC was narrowly passed. The amendment, however, proved unacceptable to the governor, who vetoed it.

While the collective bargaining process seems to have worked in an overwhelming majority of instances, there still remains the unresolved question as to how to deal with impasse if it does occur.

There remain mediation and fact finding, both of which are available under state auspices. Over the decade, mediation has proved a reasonably effective mechanism largely due to the quality of the staff of state mediators employed by the Michigan Employment Relations Commission. Their services are available free of charge to any or all in need of them. According to existing law, notice must be given to MERC well in advance of the expiration of a contract, of success or failure of achievement of a successor contract. If failure is reported, a mediator is assigned to the case and is available in relatively short notice if impasse should occur.

Neither mediation nor fact finding, however, allows for the imposition of any conclusive settlement should the parties fail to agree, essentially of themselves with third-party assistance. If neither mediation nor fact finding produces results, the two parties may jointly and on their own volition submit the remaining issues to arbitration. Arbitration may not be imposed on the parties, however.

## Conclusions

The total impact of collective bargaining on institutions of higher education in Michigan, either individually or collectively, has yet to be assessed. To date only limited observations in this direction have been made. In respect, however, to the restricted question of this paper, some conclusion seems warranted.

Collective bargaining in higher education in Michigan has not altered greatly the nature of state-institutional authority relationships other than providing for a labor relations framework within which faculty personnel policies may be derived. There is at this juncture no clear indication that this will change, but isolated voices are beginning to be heard.

At a recent informal, university-sponsored round-table discussion of future directions of collegiate collective bargaining in Michigan, one university president did state very firmly his personal conviction, based on his experience with the emerging phenomenon. He declared that, as economic pressures increase, it is inevitable that collective bargaining in higher education must move to the state level, at least for senior institutions. He acknowledged that this would substantially alter long-standing relationships, but he expressed unequivocally that such sacrifice of highly

prized institutional autonomy as might be a consequence was a necessary cost, which had to be paid to achieve a greater gain.

This point of view received little support, but the raising of the possibility is significant. It appears most probable that it will be a matter of more serious and extensive discussion in the years immediately ahead.

Meanwhile, Michigan higher education continues to live under the sign of paradox.

# STATE-INSTITUTIONAL RELATIONS UNDER COLLECTIVE BARGAINING IN NEW JERSEY

by

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The recent quest of faculty to restructure power relations in institutions of higher education by adopting the techniques of collective bargaining is expected to redistribute authority between faculty and higher education administrators as management discretion is narrowed by the negotiation and implementation of a contract. However, in attempting to shift power to the faculty, faculty bargaining organizations may also affect traditional authority relationships within the faculty, between faculty and students and within the administrative hierarchy. This paper will assess the impact of faculty bargaining on an aspect of the redistribution of authority within the administrative hierarchy that tends to be peculiar to the public systems; that is, on the extent to which bargaining precipitates or reinforces a centralization of power from local institutions to external governing authorities.

Specifically, to what extent is collective bargaining expected to lead to a centralization of authority from individual institutions (1) to statewide educational coordinating authorities and (2) to the more political arms of state government, the governor's offices and the legislature?

This redistribution of authority is expected to come from negotiating structures that permit the participation of external levels of authority in negotiations over issues previously under local control. Thus, broad bargaining units are more likely to foster centralizing tendencies. However, the end-running activities of faculty unions are also likely to create centralizing tendencies to the statewide coordinating authorities, where the bargaining unit does not encompass the entire system, and to the political authorities, regardless of the scope of the bargaining unit. It is axiomatic that unions go to the source of power when it is not existent at the bargaining table. The diffusion of management authority in public systems of higher education, coupled with the frequent absence of management consensus across the levels of authority, make higher education bargaining particularly susceptible to end-running activities.

The question of the impact of bargaining on authority relationships in New Jersey will be considered by assessing changes in authority relationships with respect to specific issues before and after the onset of collective bargaining. The data used to analyze the redistribution of authority are derived from a longitudinal case study of the New Jersey system of higher education. Since 1969, the department of research of the Institute of Management and Labor Relations, Rutgers University, has been documenting the

development of the faculty bargaining movement across the United States, with particular attention given to New Jersey institutions of higher education. The New Jersey research effort was supported initially by the U.S. Office of Education and, for the past three years, has been funded by the Carnegie Corporation of New York.[1]

The major purposes of the research have been twofold: first, why have faculty at these institutions chosen to organize and second, what have been the effects of the faculty bargaining movement on the structure and processes of the institutions?

The data base to answer these questions has been developed from over 600 structured and unstructured interviews, direct observation of over 500 meetings related to the bargaining and governance processes, content analysis of hundreds of documents related to the evolution of the bargaining and governance processes and a statewide questionnaire survey of faculty perceptions.

This paper will first review the background of higher education and bargaining in New Jersey. Second, the "before" bargaining status of authority relationships will be described. Finally, the impact of bargaining on the locus of authority will be determined and explained.

## Background

To provide an overview of bargaining in the New Jersey system of higher education, this section will describe the organization of higher education, the enabling labor legislation, the extent of bargaining, a brief description of the causes of bargaining and, finally, the bargaining structure.

### The System

The public system of higher education in New Jersey consists of Rutgers University, the eight state colleges, the Newark College of Engineering (NCE) -- recently renamed the New Jersey Institute of Technology (NJIT) -- the College of Medicine and Dentistry (CMDNJ) and fifteen community colleges. Higher education in New Jersey is coordinated by the state board of higher education and its administrative arm, the department of higher education. Historically, the state of New Jersey has exported over 50 percent of its college-bound students to other states. Under the new agency, enrollments within the state have increased rapidly with the expansion of old institutions and the establishment of new community and state colleges.

Until the new governing apparatus was established by legislation in 1966, higher education in the state was only loosely coordinated. Under the previous commissioner of education arrangement, Rutgers University and NCE had enjoyed substantial autonomy, particularly when compared to the state

[1] While the study was made possible by funds from the U.S. Office of Education and the Carnegie Corporation of New York, the statements made and views expressed are solely the responsibility of the author.

colleges that were subject to a high degree of centralized regulation. All four-year institutions have separate governing boards.

The public community college system emerged in the mid-1960s and is funded jointly by state and county governments. Each college has a separate board of trustees appointed by county officials.

The creation of the Department of Higher Education (DHE) in 1966 and the consequent centralizing tendencies of its attempts to rationalize policy making in higher education confounds the process of isolating the centralizing effects of collective bargaining.

## The Legislative and Administrative Framework

The emergence of faculty collective bargaining in New Jersey was highly correlated with the passage of enabling legislation. Most public institutions were organized within two years after the passage in 1968 of the New Jersey Public Employment Relations Act, which provided collective bargaining rights for public employees in New Jersey. The law established the Public Employment Relations Commission (PERC) and procedures for determining bargaining units, holding elections and resolving bargaining impasses. Provisions for hearing unfair labor practices were not specifically included in the act. Earlier court decisions prohibiting the right of New Jersey public employees to strike were not superseded by the legislation.

To oversee the collective bargaining activities of state employees, Governor Hughes established by executive order in 1969 an Office of Employee Relations (OER). Policy guidance for this office is provided by an employee relations policy council comprised of key cabinet officers.[2] This office, continued by subsequent governors, plays a key role in higher education negotiations in four-year institutions.

## Extent of Bargaining

In the public system there are currently 19 bargaining units covering 26 institutions. One bargaining unit is comprised of the eight state colleges; the remaining bargaining units cover a single institution. There are also five private institutions now bargaining. Table I summarizes the institutions, the bargaining agents and the dates of initial organization (including subsequent changes in affiliation). All the public institutions in New Jersey are organized with the exception of the new Salem Community College. New Jersey was the first state in which all types of institutions were organized for bargaining purposes.

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[2]The governor's Employee Relations Policy Council, consisting of the state treasurer, secretary of state, the president of the Civil Service Commission, comptroller and director of the division of the budget and accounting, counsel to the governor and the director of the office of employee relations, was established by Executive Order No. 3, April 1970. The office of employee relations was established by Executive Order No. 4 on the same date.

TABLE I

BARGAINING UNITS IN NEW JERSEY
INSTITUTIONS OF HIGHER EDUCATION

| Institutions | Current (initial) Bargaining Agent | Year of Organization |
|---|---|---|
| **PUBLIC** | | |
| STATE COLLEGES | | |
| Kean, Glassboro, Jersey City Paterson, Montclair, Ramapo, Stockton, Trenton | AFT (NJEA) | 1972 (1969) |
| New Jersey Institute of Technology | Professional Staff Association (IND.) | 1970 |
| Rutgers University | AAUP | 1970 |
| College of Medicine and Dentistry | AAUP | 1972 |
| COMMUNITY COLLEGES (2 yr.) | | |
| Atlantic | NJEA | 1968 |
| Bergen | NJEA | 1968 |
| Brookdale | NJEA | 1971 |
| Burlington | NJEA | 1970 |
| Camden | AFT (NJEA) | 1972 (1968) |
| Cumberland | NJEA | 1968 |
| Essex | NJEA | 1968 |
| Gloucester | AFT (NJEA) | 1972 (1968) |
| Mercer | NJEA | 1970 |
| Middlesex | AFT | 1968 |
| Morris | NJEA (IND) | 1975 (1974) |
| Ocean | NJEA | 1968 |
| Passaic | NJEA | 1972 |
| Somerset | AFT (NJEA) | 1973 (1971) |
| **PRIVATE** | | |
| Bloomfield College | AAUP | 1973 |
| Fairleigh Dickinson University | AAUP | 1974 |
| Monmouth College | NJEA | 1971 |
| Rider College | AAUP | 1973 |
| Union College (2 yr.) | AAUP | 1974 |

## Origins of Bargaining

The importance of legislation in stimulating the development of the faculty bargaining movement in New Jersey certainly cannot be underestimated. But there were other important determinants as well, including the emergence of the department of higher education. At the state and community colleges and the College of Medicine and Dentistry and, to a much lesser degree at Rutgers and NJIT, collective bargaining was a reaction to a variety of administrative practices and conditions of employment with which the faculty were dissatisfied.

Change and the consequent instability were at the base of many of the problems. At the state colleges, stress was caused by a change in mission as teachers' colleges were transformed into liberal arts institutions. The new, rapidly expanding community colleges also created strain on faculty-administration relationships. The rapid expansion of medical education and the political involvement in this process was the source of faculty complaints in the medical school.

The predominant causes in the organizing of Rutgers and NJIT were the defensive reactions by faculty and administrators against external forces. Faculty groups (AAUP at Rutgers, faculty council at NJIT), which had informally represented the faculty over the years, wanted to protect established jurisdictions. Moreover, neither faculty nor administrators of these institutions wanted to be included in broad bargaining units.

A factor facilitating the early organization of New Jersey institutions was the presence of active faculty organizations. The NJEA had informally negotiated and lobbied for the state college faculty, mostly on economic matters, for a number of years. The AAUP chapter at Rutgers and, in recent years, the faculty council at NJIT, had performed similar functions. The formation of the faculty council in 1966 at NJIT, the faculty organization (a senate-type body) at CMDNJ in 1970 and moves to reorganize the Rutgers Senate were also signals that there was stress in New Jersey higher education regarding faculty participation long before bargaining was seriously considered as an alternative.

## Bargaining Structure

With the exception of the state colleges, all of the higher education bargaining units in New Jersey cover one institution. Initially, each state college comprised a separate unit. This decision derived from attempts under the 1966 legislation establishing the state board of higher education to decentralize authority to the state colleges. Separate boards of trustees were instituted for each college where none had existed before. However, not only was the expected decentralization never realized to the fullest extent, but the hearing officer in the second unit case brought about by the AFT's challenge of the association accorded ". . . greater weight to the policy control that the board of higher education exercised over the colleges than did the commission in PERC No. 1."[3] Also, after PERC No. 1 (the first state college unit decision) was issued, PERC had found statewide units appropriate in other state agencies, and the hearing officer thought the reasoning was relevant to the state colleges.

[3]PERC No. 72, In the Matter of State of New Jersey, et al., Nov. 20, 1972.

Another relevant factor was that after the ANJSCF was elected as the bargaining agent on all six campuses, a coalition of all colleges was formed to conduct centralized negotiations. Also, when ANJSCF challenged the growing role of the governor's office of employee relations during negotiations for the first contract, the New Jersey Supreme Court determined that the governor was the public employer of state employees, not the department of higher education or the individual institutions. As a consequence, when the AFT challenged the ANJSCF as the exclusive representative in 1972, the appropriate unit was then found to comprise all eight state colleges (two new colleges had been added by that time). PERC called for an immediate election.

The administrative bargaining team at the state colleges has usually included at least two state college presidents, the director of the governor's office of employee relations (OER), the special assistant to the chancellor who handles bargaining matters, a vice chancellor and the director of the office of state colleges. The two presidents receive policy direction from the Council of State Colleges, which is comprised of presidents and chairmen of the individual boards of trustees. The chancellor's special assistant and the director of OER closely coordinate their negotiating activities. Generally, the director of OER has given way on matters of educational policy, with notable exceptions to be discussed later.

Rutgers and NJIT developed separate bargaining units through mutual agreement between the parties. Neither institution used the services of the Public Employment Relations Commission, in part because of the risk of being included in a statewide unit. Rutgers used the American Arbitration Association, and NJIT used a professor-attorney from Seton Hall University to check signature cards. However, the question of an all-inclusive unit was never really placed before PERC.

At Rutgers University, the administration has sought to maintain its bargaining autonomy. Neither the DHE nor the OER representatives sit at negotiations, but negotiations are closely coordinated with these officials. The state, somewhat reluctantly, has allowed the university to conduct negotiations in this manner.

In contrast, at NJIT and CMDNJ, the DHE representative directly participates at the bargaining table. The OER initially participated in negotiations at NJIT but the DHE representative now closely coordinates with the OER instead.

The governing boards at NJIT, Rutgers and CMDNJ do not play a significant role in negotiations. At the state colleges they participate indirectly through the Council of State Colleges, as noted above. But at the community colleges, the institutional governing boards play a major role in setting parameters and at some institutions actively participate in negotiations, often to the consternation of local administrators. A major difference between the community colleges and the four-year institutions is that the OER and DHE do not play a significant role in negotiations in the community colleges, though they would like to. Efforts by the DHE to collect and disseminate bargaining information and to encourage the development of uniform salary increases and the elimination of salary schedules have not been met with active support. The community colleges go their own way with little effective coordination, though they now appear to be moving in the

direction of more cooperative activities among themselves. The local county governments exercise general budget authority for the share of the college budgets from county sources, but rarely get directly involved in negotiations. In recent times, however, some have become sensitive to faculty salary settlements.

## "Before" Locus of Authority

Decision making on many issues relating to faculty salary and working conditions in four-year institutions has always been highly centralized in New Jersey, although there are important differences among the state colleges, Rutgers and NJIT. For all four-year institutions, decisions regarding monies available for salary improvements and other economic benefits have generally been determined outside of the individual institutions. Pensions and insurance coverage are statutorily determined and are similar for all institutions of higher education. Over the years, salary increases for state employees have been established statewide in the executive branch and increases for all state employees have been similar. For a number of years, all state employees have been on salary ranges, but important differences evolved between Rutgers and the state colleges. The Rutgers ranges included almost twice as many steps, the extra steps being merit steps. These differences were derived, in part, from the different way in which Rutgers related historically to the executive branch of government and the greater political clout of the university. The state colleges worked through the department of education while Rutgers always worked directly with the treasurer's office at budget time (even though Rutgers officially fell also under the department of education). The importance to Rutgers of this direct relationship is indicated by the fact that the university insisted that it be preserved by the legal compact that related Rutgers, formerly a private institution, to the state in 1956.[4]

Due to the centralized nature of decisions in the areas noted above, extensive political effort was required to change them. The adoption of Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) at Rutgers and the state colleges, for example, was the result of extensive faculty and administrative activity at the state level. The absence, until recently, of funded sabbaticals can be entirely accounted to the refusal of the executive branch and/or the legislature to fund them. It is not surprising that the faculties adapted historically to this decision-making environment by engaging in their own political activities. The NJEA, representing the state colleges, initiated the college salary committee in the late 1950s to lobby for better salaries and fringe benefits. The Rutgers AAUP and the NJIT faculty participated from time to time in the extensive lobbying activities of this committee, as well as mounting campaigns of their own. Rutgers AAUP lobbying efforts in the late 1960s successfully reinforced administrative efforts to bring about significant faculty salary improvements. As noted above, these activities accounted in part for the ease by which faculty in New Jersey were organized.

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[4] Rutgers, the state university law, P.L. 1956, c. 61, Section 18 (b), later reenacted in Higher Education Act, P.L. 1966, c. 302, Section 13, N.J.S.A. 18A:65-25.

On noneconomic issues, such as faculty personnel procedures and educational policy, there was a great divergence among the state colleges, NJIT and Rutgers. The department of education had a great degree of formal authority over the state colleges over a wide range of issues in addition to the economic ones noted above. Important aspects of the tenure process, such as the probationary period (three years, until recently), are statutorily determined in the state and community colleges. At Rutgers and NJIT, tenure was under the jurisdiction of the local boards. Both had AAUP-like systems.

At the state colleges, all faculty appointments and promotions were reviewed by the department of education. In fact, after the arrival of the CHE, but before bargaining, the Faculty Personnel Policies Guide for all institutions was developed with major NJEA input. Curriculum decisions were also centralized in the state colleges. All presidents were hired by the department. One president, given his limited authority, indicated he felt more like a dean. The absence of discretion in fiscal matters was a particularly sensitive matter to the individual institutions. There has been no statewide faculty governance mechanism in the state colleges.

At Rutgers and NJIT, most noneconomic, decision-making power resided in the institutions. At Rutgers, authority on many issues was further decentralized to colleges and departments. At NJIT, this was less the case until a few years before the onset of collective bargaining.

The CMDNJ was not formed into its present shape until 1970, two years before bargaining. But economic and major educational decisions have always been subject to a great degree of political influence. Examples are the severance of the Rutgers Medical School from Rutgers, the location of various campuses and the mandate of enrollment increases. Personnel decisions were localized in the institutions, but not decentralized to the faculty.

The community colleges in their early days were subject to a great deal of external influence on curriculum from county sources. But at the time bargaining was initiated, the department of higher education's influence was yet to be felt in a major way. Except for the statutory tenure policies, the community colleges were much more independent of state influence in respect to almost all decisions than the state colleges.

In summary, on salary and fringe benefit areas, decision making has always been centralized and political, except in the community colleges. On other issues, the "before" pattern of decision making varied by type of institution.

## The Bargaining Era

The impact of bargaining on authority relationships in New Jersey higher education will be assessed by ascertaining the degree to which the faculty unions have been able to influence decisions in higher education. The experiences of each type of institution will be discussed individually.

### State Colleges

The most confounding relationships among bargaining, DHE and the centralization of authority exists in the state colleges. As noted above,

decisions in the state colleges have always tended to be centralized. Even though the intent of the 1966 Higher Education Act was to decentralize authority in the state colleges by establishing local governing boards, there is common, vocal agreement among local administrations that this has not occurred. In fact, one observer has compared the move from the department of education to the department of higher education as being "thrown 'from the frying pan into the fire.'"[5] As another indication, the presidents of all the original six state colleges have resigned, most with protests against centralized state control.[6] Apparently life under the old centralized arrangement in comparison was not so bad for the presidents. All of higher education under the previous department of education had been controlled by a small (usually two or three persons) professional staff. It was a common joke that perhaps the last 10 minutes of the board of education meetings dealt with higher educational matters. So, although the formal control was there, perhaps in reality the presidents exercised more discretion than when under a department of higher education with a staff of 73 professionals (in 1974) and a governing board dealing solely with higher education concerns.

Compared to contracts in the state colleges of other states, for example, the Pennsylvania state colleges, the range of issues over which agreement has been reached is less extensive. However, the 1974 AFT agreement represents a significant change in direction. There are several reasons for this. First, as noted above, many benefits such as insurance, pensions and tenure are legislated, effectively removing them from the bargaining arena except for lobbying activities.

Second, the New Jersey bargaining law was not among the strongest so far as the unions are concerned. There were no administrative unfair labor practices procedures to enforce statutory requirements to bargain in good faith or procedures to determine the scope of negotiations; courts were the only remedy for the enforcement of statutory rights to bargain in good faith. The scope of negotiations was also limited by a provision in the bargaining law that dictated that no provision in the law "shall annul or modify any statute or statutes of the state."[7] Thus, existing education statutes were given a decided advantage when conflicts arose, as a subsequent discussion of specific issues will indicate. The Republican administration of Governor William Cahill opposed and delayed changes in labor legislation that would have strengthened the union position. For example, the governor vetoed a bill in 1972 that would have provided unfair labor practices. But, under the Democratic administration of Governor Brendan Byrne (1974), amendments to the law have been made providing for enforcement of unfair labor practices by PERC and reducing the impact of the phrase quoted above by limiting it to pensions. As a consequence, the scope of bargaining question has been opened up again.

However, before the recent amendments, the relatively weak law -- from the unions' viewpoint -- reinforced a conservative bargaining approach by the DHE and OER. For example, the administration decided not to negotiate binding arbitration under any conditions and no union was able to achieve it until a new administration, politically and philosophically committed to a

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[5]M. M. Chambers, Higher Education and State Governments, 1970-1975 (Danville, Ill.: The Interstate Printers and Publishers, Inc., 1974) p. 168.

[6]Ibid.

[7]N.J.S.A. 34:13A-8.1.

different style of negotiations, agreed to permit it -- reportedly as part of a campaign promise. An analysis of specific issues illustrates the nature of the negotiating relationship and the contribution of bargaining to a redistribution of authority.

Salary Negotiations. As noted previously, salary and fringe decisions have always been highly centralized in New Jersey. Bargaining has not changed that pattern appreciably; that is, basic salary improvements are not decided across the table. The first set of negotiations at the state colleges illustrates this point. The state negotiator in the fall of 1969 reported that a statewide salary evaluation (the Hay Study) was being conducted and that no increases would be considered until the study was complete. Over the course of the negotiations and after the governor's office of employee relations was established by executive order in April 1970, the state's role in negotiations was to increase.

The delayed evaluation report was issued in April 1970, and when mediation and fact finding had not produced an agreement by July, the state unilaterally implemented the Hay recommendations. The faculty association (NJEA affiliate) filed a suit in July claiming that the implementation deprived the state college faculty "of their rights to collective negotiations with the board of higher education."[8] The association also alleged that the office of employee relations and its policy body, the employee relations policy council, were interfering with negotiations between itself and the board of higher education.

The court disagreed. It found that the governor was the public employer, not the board of higher education, and that the salary improvements could be unilaterally implemented because negotiations were at an impasse and the state, in the absence of a settlement, had the obligation to provide higher education services.[9]

In subsequent years, various means were used by the state to communicate salary increases to all state bargaining units, from joint meetings of all bargaining agents at the state level to individual meetings with each agent. But the message was always clear: the increases are not negotiated, they reflect what the budget will bear. Negotiations have always been delayed until the state budget director has completed his work. No union, through mediation, fact finding or strike activity, has been able to break the centrally determined salary package. Deviations from the pattern for the several state bargaining units have not been major ones.

The fact that the salary increases in recent years have been very competitive with other states has not tempered the unions who have been, for the most part, left out of any direct part in the decision-making process. The fact that nonunionized employees got the same increases particularly angered them. No doubt the wage increases were determined with the presence of unions in mind, but they have not been the direct result of negotiations. The Byrne administration came into office in 1974 committed to individual, decentralized salary negotiations. But plans have been frustrated by a budget

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[8] Suit filed in New Jersey Superior Court by the Association of New Jersey State College Faculty against the Employee Relations Policy Council, and the New Jersey Board of Higher Education and other public agencies, July 1970.

[9] 112 NJ Super 237 (Law Div. 1970).

crisis of major proportions. Without an income tax the state is faced with an almost half-a-billion-dollar budget deficit, not including any salary increases for the state employees.

In other areas, the DHE continued to promulgate and implement policies that the unions perceived as having implications for negotiable faculty working conditions. A discussion of tenure and outside employment policy changes follows.

Tenure Guidelines and Procedures. One of the initial goals of DHE was to bring about basic changes in the tenure process at the community and state colleges. Tenure had been provided after three years -- the same as in New Jersey elementary and secondary schools. The major aim of the changes was to limit the loss of flexibility caused by the tenuring in of these institutions. Failing at attempts to enlist NJEA support for such changes, the DHE attempted to bring about unilateral change through legislation. But the NJEA lobby was successful on several occasions in blocking the legislation from coming out of committee.

"In the absence of legislative relief," the DHE took another route and produced a report -- in part the result of a Council of State Colleges Committee effort -- which took the position that "it is necessary to consider internal modifications of policies and practices that will assist in ameliorating the problem (of too many tenured faculty)."[10]

The outcome of the report was the adoption by the board of higher education in September 1972 of resolutions on tenure policies. Similar resolutions for the county colleges were passed in October. The resolutions stopped short of quotas, but required each local governing board to develop a 10-year plan, establish more rigorous review procedures, limit tenure to individuals with terminal degrees (not applicable to county colleges) and establish a periodic evaluation of tenured faculty.

The faculty associations (both state and community college organizations) filed a suit claiming, among other things, that the board had unilaterally instituted negotiable working conditions. The court disagreed, however, upholding the authority of the BHE to implement tenure policies under education statutes and ruling that tenure regulations were not mandatory subjects of negotiations.[11]

Before the New Jersey Supreme Court decision was handed down, the chancellor mounted another legislative effort to lengthen the probationary period. This time he was successful. While the NJEA publicly opposed the bill, its lobbying forces at the legislature were not in evidence. The current bargaining agent, the AFT, also opposed the bill but its lobbying efforts were also apparently not felt by the legislators.[12] The bill provided for a five-year

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[10] Tenure at the State Colleges of New Jersey, Department of Higher Education, June 1972, p. 3.

[11] 64 N.J. 338 (1974).

[12] A Trenton Times article indicated that while the NJEA and AFT opposed the tenure bill, "their lobbyists were not in much evidence yesterday. 'The bill would never have passed if the teacher unions had mounted a real campaign against it,' a senate official pointed out." Trenton Times, April 27, 1973, p. 9.

probationary period for state and community college faculty and called for faculty evaluation and career development programs.

The DHE was given the authority to implement the legislation, and it appointed a committee of state and community college administrators to draft the guidelines. This committee subsequently held hearings for the bargaining agents and the institutional governing bodies, the first time broad-based faculty input in the state colleges had been solicited in this manner. It is significant to note that there has been no statewide faculty governance organization to provide input on policies developed centrally by DHE, though there have been recent attempts by the individual senates to form a statewide coalition.

The AFT opposed these procedures, maintaining that many of the issues being dealt with were negotiable. The AFT was ultimately successful in blocking the implementation of the guidelines in the state colleges as a condition of settlement for the negotiations in February 1974. All new guidelines affecting working conditions would not be implemented until a study commission appointed by the governor completed its work. This agreement was worked out by the governor's counsel in a meeting including AFT leaders, but not including any OER or DHE officials. The guidelines were implemented in the county colleges, but not in the state colleges.

Outside Employment Policy. In February 1973, the board of higher education adopted outside employment guidelines prohibiting outside employment where such work constituted a conflict of interest or where there was a conflict with job responsibilities. Written permission was required and certain limitations on compensation were included. The Association of New Jersey College Faculty (NJEA) and the Association of New Jersey Community College Faculty (NJEA) protested that the policy dealt with negotiable working conditions and, in part, was in conflict with an existing agreement in the state colleges. The New Jersey Supreme Court agreed that the board's guidelines were negotiable "insofar as they embodied additional restrictions on outside employment beyond those which were preexistent."[13]

The conservative stance of the state in negotiations had a number of effects. One of the major factors creating the changeover in bargaining agents from the NJEA to the AFT was the inability of the NJEA to produce. Moreover, it was the conservative stance of the state which, in part, probably led to a greater degree of political involvement in both sets of state college negotiations under the AFT. In other words, the way to overcome a perceived unruly management bargaining team is to change the nature of the membership of that team, an alternative that is not available in negotiations in private industry. Failing to reach agreement after several months of negotiations, the AFT delayed negotiations and threatened strike action until a Democratic governor, whom labor helped elect and from whom campaign promises had reportedly been received, was in office.

The new Democratic governor immediately became involved in the negotiations through his counsel, an individual who, in representing state employees under the previous governor, had sharply criticized the style of negotiations of that administration. To avert a strike, the governor's counsel

[13] 66 N.J. 72 (1974).

met privately with AFT leaders to discuss the problem areas. To the consternation of others on the management bargaining team, it was clear as to who was in control of the negotiations. One member privately said: "We receive our marching orders from [the governor's counsel]." Under pressure from the governor's office, the college presidents gave in on some issues. When it became clear that binding arbitration was to be agreed to, the chancellor did request to be consulted on the specifics, particularly possible exclusions. In addition to the agreement for arbitration, a major advantage for the union was that all policy changes dealing with working conditions were to be held up until a study commission to resolve the conflict between the collective bargaining law and other states' laws reported. So while the NJEA had fought and lost the battle to keep the state out of negotiations, the AFT used political pressure to open up negotiations. In going this route they were duplicating the style of the chancellor who had also bypassed the bargaining process by going directly to the legislature to bring about tenure changes.

However, all was not to be peaceful for the governor. In negotiations for a wage reopener that began the same year (fall of 1974), the AFT called for a strike after only three bargaining sessions. The OER had once again, this time in a difficult budget year, indicated that meaningful salary negotiations could not occur until the budget picture was more clear. For reasons that will not be chronicled here, an eight-day strike occurred during November and, once again, direct intervention by the governor's counsel was necessary to end the strike. While the basic contract issues were not resolved, a seven-point agreement signed by the AFT leaders and the governor's counsel (without DHE or OER participation) ended the strike. One item in particular caused the governor significant problems with the state college presidents -- the issue of back wages. They demanded, and received, a meeting with the governor and threatened to refuse to "reward" the strikers by paying back wages. The chancellor, who had been publicly supporting the governor's budget program, was also angered. A compromise was eventually worked out in mediation in which the strikers did not receive full payment for time lost.

So what has evolved in the New Jersey state colleges under a state administration more supportive of bargaining than its predecessor is a highly centralized decision-making process on major issues like salaries and arbitration. Another indication of the degree of centralization is the fact that the OER policy council has not met under the new administration. The OER apparently takes its direction directly from the governor's office. Again, this body, which had included the president of the Civil Service Commission (not retained by the new administration), had been rather conservative in labor relations matters. The state budget director, who had also resisted altering his procedures to accommodate the bargaining process, resigned early in the new administration.

Local Negotiations. While there has been centralized decision making in state college bargaining on many issues, there have been some factors that have offset some of this centralization. Even though local negotiations were strongly discouraged by the state during the tenure of the NJEA, there is significant evidence that local problem solving took place. One institution negotiated a local agreement and for the most part, it was honored, despite contrary advice from the state. Another institution had substantially completed local negotiations but implemented the agreements in another way. Other formal and informal agreements on individual issues were reached on

several campuses as the administration attempted to respond to local problems. Also, local NJEA leadership-administration relationships were long standing. Some of these agreements were known to the state; others were not. The nature of the issues dealt with tended to be noneconomic.

Before negotiations for the NJEA's second contract commenced in 1971, the chancellor sent a letter to local administrations including the following statement:

> "...all negotiations affecting members of the state college faculty unit will be carried on at the state level, and that all agreements reached will be incorporated in the statewide agreement and shall apply uniformly to all members of the statewide unit. No negotiations shall be carried on at the college level."[14]

The negotiations for the second contract were never completed because the AFT challenged the NJEA and became the new bargaining agent. In its first set of negotiations, the AFT placed great priority on local negotiations and, with the aid of political pressure, was able to legitimize and formalize local negotiations. The contract signed in February 1974 called for a local consultation procedure and provided local negotiations over major revisions of appointment, retention, tenure and promotion procedures; over workload policies at Stockton and Ramapo colleges; local consultation over work surroundings, equipment and support personnel and the academic calendar; negotiations over assignment or location of parking spaces; consultation over changes in policy related to granting credit hours for independent study; supervision of practice teaching or internships or noncredit courses; and negotiations over disagreements over faculty responsibilities. Many of these issues had been dealt with informally under the NJEA, often using established governance procedures.

Contract Administration. One major difference between the state colleges and other institutions that has centralizing tendencies is the nature of the grievance process. The DHE has a step beyond the local administration, as does the OER. However, due to the limited scope of the initial grievance procedure, for example, nonreappointments were not grievable, there were few grievances under the contract, thus minimizing centralizing tendencies. However, the scope of the procedure negotiated by the AFT in 1974 is broader and will likely increase the centralizing effects of the grievance process.

At Rutgers, NJIT, CMDNJ and the community colleges, the final administrative involvement is at the local institution. Again, the design of the grievance process tends to reflect historical authority patterns.

## Community Colleges

The two-year institutions represent the best context in which to evaluate the interaction of bargaining and DHE. Since no one from DHE or OER has been at the bargaining table, there has been no direct impact on decision making in the bargaining context. Efforts of the DHE to coordinate bargaining communications have also been resisted and unsuccessful. Thus, DHE influence in this sphere has been minimal, and the great diversity of the agreements and their generally broader scope reflect this fact.

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[14] Letter from Chancellor Ralph A. Dungan to state college administrators, September 1971.

However, local administrations have been very much aware of DHE activities in other areas such as program approval, implementation of complex accounting and auditing procedures, development of policies to control tenure, changes in tenure probation and implementation of career planning, and proposed differential funding for different types of programs.

What the bargaining agents have attempted to do through court action and arbitration is to stop perceived unilateral activities of DHE in areas of major concern to faculty, e.g., tenure and outside employment policies.

Rutgers University

During the first set of negotiations at Rutgers University in 1970, it appeared as if bargaining were going to have a major centralizing effect. Unable to achieve agreement with the administrative bargaining team, the AAUP by-passed the university and negotiated an economic settlement with DHE or OER. As part of this settlement, however, the AAUP agreed to differential treatment of Rutgers librarians, pending the outcome of a state job evaluation. The librarians, who have faculty status at Rutgers, were incensed at this treatment, and the administration was not terribly happy at having this settlement imposed on it either. After a protracted negotiating period, the dispute was eventually resolved in favor of the librarians. But the incident was important in that it sensitized the parties to the need to work more cooperatively to solve local problems. AAUP end-running activities have continued, but for the most part have been restricted to matters where the real power existed beyond the local institution before the onset of bargaining -- salary and economic fringes. In this sense, the AAUP was just continuing its past practices before bargaining.

One of the reasons that bargaining at Rutgers has not centralized authority on other issues is that the parties have made a purposeful effort to preserve local governing mechanisms and thus local authority. The limited scope of the Rutgers agreement reflects these shared values. Two examples will illustrate how the parties have attempted to mesh governance and bargaining. When the AAUP proposed certain changes in the tenure process, the administration was essentially in agreement with the changes. But rather than incorporate the changes into an agreement, the parties jointly submitted their proposals to the university senate for broader input. The senate processed the proposals and eventually recommended changes that were incorporated into University Rules and Regulations.

As another example, the AAUP wished to achieve a long-desired goal, a sabbatical program. Again, suggestions were made to the senate to develop a self-financing program, and the senate devised such a plan. State authorities were not directly involved in either of these issues, although if the sabbatical program had involved a cost factor it is likely they would have been. The self-funding program provides 80-percent pay for a full year.

In any event, the willingness of the AAUP to solve problems outside of the bargaining context has not interfered with the greater autonomy from the state on educational policy and faculty personnel matters that the Rutgers administration and board of governors have enjoyed by tradition and law. There has been little disruption of internal governance mechanisms by collective bargaining as the AAUP has attempted to bring about change. Using

established mechanisms, the AAUP addresses issues before the senate and brings other issues to it. For example, when the AAUP became aware of an agreement between the Rutgers administration and DHE concerning control of the computer, the AAUP called for a senate investigation. A senate committee studied the issue and, with the AAUP, pressed the issue before the board of higher education. Action on the computer arrangements was delayed, though there are differences of opinion as to whether the final result was better than the original agreement.

The AAUP also took the DHE to court for violating the autonomy of Rutgers in adopting a student-faculty ratio funding policy and a new (for Rutgers) budgetary calendar. The AAUP also claimed that the unilateral adoption had violated the New Jersey Employer-Employee Relations Act for not bargaining over working conditions, and the procedural requirements of the New Jersey Administrative Procedures Act. While the AAUP lost its case on all counts,[15] its activity does indicate the role the AAUP plays. At Rutgers, the determination of the calendar was delegated to the senate, but the senate cannot challenge the DHE for interfering with its jurisdiction since, as part of an institution whose administration and governing board chose not to undertake a legal challenge of DHE authority, it cannot independently take action. So the AAUP undertook the challenge and lost partly because the court said it was the university's obligation to undertake legal action to protect its autonomy.

While bargaining has not contributed in a major way to the centralization of authority between Rutgers and the state, this is not to say it has not occurred. A continuing, public battle between the Rutgers administration and the DHE underlies the perception of the Rutgers administration that the DHE is seriously interfering with the autonomy of the university. Soon after Governor Byrne took office in 1974, President Bloustein sent a lengthy memorandum to the governor outlining the ways in which he felt the chancellor had exceeded his legal authority to establish broad policy outlines. President Bloustein claimed that the chancellor was using his ex-officio position on the Rutgers Board of Governors to manage the institution, was attempting to invade the university's control of its personnel policy, was attempting to determine academic policy by the imposition of a sixteen-week calendar, was using the budget process as a tool of management accountability instead of fiscal accountability and was using the approval process to manage education rather than to ensure compliance with the master plan. In a reply to the governor, the chancellor did not deny President Bloustein's statements, but maintained that the relationship of Rutgers and the state should be based more on policy considerations most reflecting the public interest and not from a legal viewpoint. For the purpose of this paper, it is sufficient to note that there is significant tension between the university and the state as a consequence of the evolving managerial efforts of DHE and that the Rutgers administration has used the political route to challenge the DHE.

The Rutgers-DHE tension is contributing to a basic change in the bargaining relationship. The need of the university to respond in a timely fashion to external demands and an attempt to streamline the management of the university as a response to external pressures have created a significant degree of faculty-administration tension over the past two years as the faculty perceive they are being left out of important decisions, some of which they

[15] 126 N.J. Super. 53 (App. Div. 1973).

oppose. These changes, among others, have led the AAUP, which has felt left out of these activities, to request negotiations for the first time this year over a wide range of governance issues. Whether bargaining will centralize authority on these issues is yet to be seen. But a five-year span of bargaining at Rutgers has contributed little to the centralization of authority to external authorities. Indeed, the efforts of the AAUP in some instances have attempted to bring authority back to the institution. A greater degree of formal local autonomy and, until this year, a mutual agreement between the parties at Rutgers to limit formal negotiations to issues other than governance account for this conclusion.

NJIT and CMDNJ

The pattern of bargaining at NJIT and CMDNJ closely follows the pattern at Rutgers. Even though state negotiators have been at the bargaining table at these institutions, the limited scope of negotiations has minimized external influence through the bargaining mechanism. At CMDNJ, despite the virtual absence of either a faculty personnel system or effective governance mechanisms, the AAUP was satisfied with a provision in its first contract that indicated that negotiations over these issues would take place only if bylaws establishing these factors were not approved by a certain date. The bylaws were approved. At NJIT a close bargaining relationship of the agent-faculty governance body and the mutual desire of the parties to minimize outside interference were important factors. Moreover, the NJIT governing board possesses similar, if not stronger, legal autonomy from the state than Rutgers. The CMDNJ governing body is more closely related to the state, but still possesses more authority than the state college governing boards. For example, tenure policies are established by board bylaws, not by statute.

Summary

1. At the state colleges, the bargaining process reflects a history of centralized decision making within the educational hierarchy. However, a conservative bargaining posture by the DHE and OER and a relatively weak bargaining law have produced a greater degree of political involvement in the educational decision-making process.

2. At Rutgers, NJIT and CMDNJ, economic decisions are centralized as before but most often the scope of bargaining has been limited for nonlegal reasons as noted above, thus minimizing the centralizing tendencies of negotiations. The greater autonomy of the local boards reinforces this pattern.

3. At the community colleges, bargaining has moved forward with minimal external influence on any kind of issues. The more extensive agreements reflect this factor, as well as a greater tendency to use the bargaining process (vis-a-vis governance) to solve problems.

4. The centralizing effects of DHE, in addition to creating pressure for bargaining, have forced the unions into court on a number of occasions in an attempt to bring authority back to the faculty, i.e., to broaden the scope of negotiations. In the context of bargaining, the DHE continues to promulgate and implement policies that the unions perceive as having implications for negotiable faculty working conditions. Or, as noted above, failing to achieve

agreement with the NJEA on tenure changes, the DHE bypassed negotiations by seeking legislative changes. It is interesting to note that the president of Rutgers also resorted to political tactics in an attempt to offset what he felt were the excessive centralizing effects of DHE. Indeed, all presidents, when asked to relate their feelings about the centralizing effects of bargaining versus DHE, considered the effect of DHE to outweigh that of bargaining by far. The interesting aspect is that in the context of diffused management authority, unions and various levels of management engage in end-running activities to achieve their goals.

5. Bargaining has not always led to a centralization of authority beyond a local institution on all issues. Negotiations between the union and the local administration may result in a coalition to bargain together in order to protect local autonomy or to pursue common goals individually against state administrative authorities or the legislature. In the former alternative, the parties could settle local issues directly, establishing either local rules that do not appear in the agreement or local deviations to circumvent the broader formal contract, or the parties may agree jointly to pursue rule changes through established local governance mechanisms. An important effect of this type of coalition would be to preserve traditional governance procedures. In fact, a shared belief in preserving these procedures may reinforce this activity. However, these tactics are likely to be effective in the long run only where the local governing board has some degree of autonomy, since the circumvented parties may not permit such activities once they become aware of them. Under the AFT, many of these informal negotiating activities in the state colleges have been institutionalized in the contract.

In summary, collective bargaining in New Jersey public institutions of higher education has tended to adapt to historical patterns of authority. As a consequence, the separate centralizing effects of bargaining in general have been minimized. To the contrary, bargaining agents generally have attempted through bargaining and court action to offset the more dominant centralizing effects of the department of higher education as it has attempted to rationalize decision making in New Jersey higher education. It was the inability of the state college bargaining agents to counter DHE efforts to promulgate policy in areas the bargaining agents perceived were negotiable, which eventually led to political involvement in educational matters. Finally, local negotiations, some legitimate in the eyes of the state and some not, have also tended to offset some of the centralizing tendencies of collective bargaining.

## Propositions

The New Jersey experience suggests some propositions against which other experiences might be tested. These propositions are as follows:

1. Unions will adopt those bargaining strategies necessary to achieve their goals, including end-runs to higher educational management or to political forces, a process that has centralizing tendencies.

2. A relatively weak bargaining law, coupled with a conservative management bargaining approach, may lead to greater political involvement since the union perceives that this approach is more likely to achieve desired gains.

3. Centralization under bargaining is more likely where there is a tradition of centralized decision making.

4. Broad bargaining units that are not reflective of the "before" bargaining locus of power may create centralization if the "before" locus of authority is below the level encompassed by the unit.

5. The locus of authority under bargaining may vary by issue, particularly between educational and political forces. Economic decisions are always likely to involve political forces.

6. The broader the formal scope of negotiations, the greater the centralization. To the extent traditional governance is utilized, the lower the formal scope of negotiations. However, the broader the unit, the more difficult it is to utilize local governance processes.

7. In broad units encompassing different types of institutions not connected with traditional governance mechanisms, the centralization of authority will be faster since there are no other mechanisms for faculty input at that level.

8. Where state coordinating authorities have centralized authority in negotiations, bargaining may decentralize decision making to faculty but not to local institutions.

9. Strike activity is likely to politicize the bargaining process, though in New Jersey other forces were more important.

10. Offsetting the centralizing tendency will be efforts at the institutional level to solve problems and preserve local autonomy. Legal or traditional autonomy reinforces these activities.

# COLLECTIVE BARGAINING, THE STATE UNIVERSITY, AND STATE GOVERNMENT IN NEW YORK

by

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## Introduction

This paper reviews the experience of the State University of New York (SUNY) with five years of collective bargaining and gives particular emphasis to its impact on state-institutional relationships. After providing some background material, the paper discusses the Taylor law, the New York Public Employment Relations Board (PERB) and the office of employee relations (OER). Then it presents observations that result from a study of SUNY conducted in the spring and summer of 1975. The paper concludes with several observations about the actual and potential impact of unionism on state government-institutional relations.

## Organizational Background

The 29-campus State University of New York (SUNY) is the only public institution in the state established directly under the overview of state government. With an enrollment of 140,000 full-time students, the university consists of four university centers (two of which have also health science centers as part of their campus), two medical centers, 13 colleges of arts and sciences (previously predominantly teacher education institutions), six agricultural and technical colleges, three specialized colleges (forestry, maritime and optometry) and one nonresidential college. For this system, nearly 15,000 faculty members and nonteaching professional employees bargain as one unit, represented by the United University Professions (UUP), under state permissive legislation known as the Taylor Law. On the other side of the table, "management," is represented by the state office of employee relations (OER), backed up by representatives from the SUNY central administration in Albany and from various state offices, especially the division of the budget. The bargaining process is conducted in a manner formally separate from the university's board of trustees whose concerns and interests are represented to the OER by the office of the chancellor.

Economic provisions agreed to in bargaining are subject to the approval of the legislature and are submitted to it as a part of the total executive budget for the state by the governor. In practice, however, since negotiations have usually not coincided with the normal budget process, fiscal changes resulting from the union contracts have gone to the legislature in a supplementary budget or as special legislative bill. As a result, they may have received more direct attention than normally would be the situation in the review of the executive budget.

The structure of the state legislature as it relates to higher education warrants a brief mention. The main avenue for the university budget traditionally has led to the legislature via the governor's office. During

the past two years each house of the legislature has had a committee on higher education, either as a standing or a select committee. Previously, since 1966 at least, there was a joint committee of both houses to serve this purpose. These legislative committees, however, have concerned themselves with the private colleges and universities as well as with the affairs of the City University of New York, SUNY and the community colleges. And they have not played a significant role in budget review but, rather, have given their attention to special matters such as scholarships and grants, student discipline, academic programs and general planning of higher education.

The legal basis for the relationships central to this paper were established by means of three legislative actions and subsequent amendments. One is the statute that served to establish the State University and explicates in considerable detail the responsibilities and authorities of its governing board. A second is the "permissive legislation" that guarantees the right of public employees throughout the state to engage in collective bargaining with appropriate agencies such as municipalities, local boards of education and the state itself. The third is a brief statute that established the office of employee relations as a unit of the executive branch to conduct negotiations for the state with all of its employees. Here we will discuss only the legislation on bargaining and that establishing OER.

## The Taylor Law and the Public Employment Relations Board

The 1967 Public Employment Relations Act, known as the Taylor Law in recognition of the chairman of the committee that formulated the philosophy basic to the act, generally receives credit as the initiator of collective bargaining for professionals in the university. It is a standard labor relations statute under which all public employees, state, county, city, town, village, public authorities, certain special service districts and school districts, receive the right to organize for the purpose of collective bargaining. Essentially, the statute requires public employers to negotiate with employee representatives and to enter into written agreements, sets up impasse procedures for the resolution of contract disputes, prohibits improper labor practices by both employers and employee organizations and continues the public law prohibition against strikes by public employees.[1] There is no provision in the law for binding arbitration other than for police and firemen.

The act is administered by the Public Employment Relations Board (PERB), which consists of three members appointed by the governor with the advice and consent of the senate "from persons representative of the public." Its chairman serves full time and oversees PERB staff and administration. It exercises three primary functions: the determination of bargaining units and certification of bargaining agents, the resolution of contract negotiation disputes by providing for mediation and fact-finding processes including maintaining staff and panels and by supervising arbitration procedures, and the establishment of procedures for and serving as a court of appeal on matters related to improper practices.

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[1] The statute is most explicit about legal action that shall be taken in the event of a strike and about the penalties to be imposed. Nevertheless, strikes by school teachers have taken place within the state. Superintendents and school boards have not instituted the appropriate legal actions or, if they have, have not generally followed through to the point of severe penalties other than the loss of pay for days during which teachers have not worked.

The PERB determines the culpability of employees' organizations for striking and orders appropriate forfeiture of dues check-off privileges. Other penalties can be administered by the courts and the employer. It also has a responsibility for making statistical data available on wages, benefits and employment practices and for recommending changes in the law to the legislature.

After the initial unit determination, PERB has had only four cases related to the university. One of these falls into a routine category in that it dealt with the designation of administrative officers in the category of "management confidential" and thus not eligible for membership in the union. Another decision supported the ruling of a hearing officer who rejected an improper practice charge by the bargaining agent. This leaves two decisions of sufficient significance to warrant brief attention.

The first ruling, in January 1974, constituted a reaffirmation of the original unit determination decision. The Civil Service Employees Association with the Senate Professional Association (SPA) and the American Association of University Professors' Council for SUNY as interveners filed a petition for the decertification of the SPA "as the representative of certain nonacademic professional employees." In effect, it sought to limit SPA to academic personnel, a desire opposed before the PERB hearing officer by SPA. In a lengthy decision the hearing officer denied the petition on the basis that "NTP's [nonteaching professionals] did enjoy effective and meaningful negotiations on salary as well as other matters."

The second decision, in April 1974, bore only indirectly upon SUNY, but contained a significant implication for faculty governance. This case resulted from a petition of the board of higher education of New York City. The question raised was: "Is the composition of the personnel and budget committees (which consider the reappointment, tenure and promotion of faculty) a mandatory subject of negotiations?" The union, the Professional Staff Congress, sought to bar students from membership on these committees. The PERB in a split decision, two to one, determined that student participation on the committees was not a term and condition of employment of the faculty. Recognizing the tradition of peer evaluation, the ruling notes that "there is a difference between the role of college teachers as employees and their policy-making function which goes under the name of collegiality." The essence of the decision was stated as follows: "We ... distinguish between the role of faculty as employees and its role as a participant in governance of its colleges. In the former role, it has the right to be represented by the employee organization of its choice in the determination of terms and conditions of employment.... In the latter role, the faculty exercises prerogatives related to the structure of governance of the employer.... These prerogatives may continue to be exercised through the traditional channels of academic committees and faculty senates and may be altered in the same manner as available prior to the enactment of the Taylor Law." It appears that in New York the PERB may move in the direction of recognizing a distinction between collective bargaining and faculty governance and, in making this distinction, place limitations upon the scope of bargaining.[2]

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[2]As an interesting and perhaps significant sidelight, it should be noted that the board of regents in 1974 reaffirmed a 1972 policy recommendation that academic tenure, curriculum development and revision, faculty evaluation and promotion, student/faculty ratios and class size, and organizational structure should not be included in collective negotiations.

Office of Employee Relations

Following the enactment of the Taylor Law, the governor designated a negotiating committee for bargaining with state employees consisting of his secretary, the chairman of the Civil Service Commission and the director of the budget. A unit of the division of the budget served the committee as a research and resource agency. However, by the time the university professional personnel entered into negotiations, this structure had been succeeded by the statute-constituted office of employee relations (OER), which was responsible for developing state employment policies and for devising strategies and tactics expedient for their implementation. The statute, Article 24 of the Executive Law, went into effect June 1, 1969.

The OER statute is a very brief one creating the office as an "agent" for the governor responsible to him for the conduct of negotiations, to "assure the proper implementation and administration of agreements reached," and to assist the governor and "direct and coordinate" the state's activities under the Taylor Law. Its director assists the governor "with regard to relations between the state and its employees." Significantly, it provides that agreements negotiated shall be implemented and administered "notwithstanding any inconsistent provision of law" upon "written request" from the director of the office. The first contract with the SUNY professional union (SPA) established the OER as respondent to grievances at the third step following review by the office of the chancellor. By the terms of the contract, it also serves to obtain arbitrators mutually satisfactory to the union and itself. At the same time it carries the burden for the state when a grievance goes before an arbitrator.

Concurrently the OER staff has developed a close working relationship with counterpart staff members in the central administration. As a result, matters related to contract administration have been reviewed informally. The two offices have collaborated in resolving questions arising from the interpretation of contract provisions and were able to cooperate closely in the preparation for the second round of contract negotiations. They also reviewed policies likely to affect the agreement such as those concerned with retrenchment, contract administration procedures related to such matters as leaves and travel allowances, and job security review.

A parallel relationship did not develop with the union leadership, although the first executive secretary of the SPA and the OER staff were in fairly regular communication during the initial period of implementing the first contract. A similar gap has held between the union leadership and central administration, although there was some evidence that in the last year more effective interrelationship has grown out of conferences with the chancellor. The fact that the union leadership has changed at regular intervals following elections and that its elected officials have tended to view the "administration" of the university with some distrust undoubtedly has proven a factor here.

In summary, as one views the background for collective bargaining in New York, the organizational structures accompanying it have shaped the relationships between the university and state government and will continue to do so. Unionization on the part of the professional staff has appeared as a direct consequence of permissive legislation (the Taylor Law) that established a semijudicial public employees relations board. This board (PERB) has enforced the formation of one large, sprawling bargaining unit, parallel to SUNY itself and composed of widely diverse academic centers. Major university

research and professional centers at Buffalo and Stony Brook have been grouped together with four-year general purpose teaching colleges and two-year technical and agricultural institutes. The formation of the OER as an agency of the governor to handle negotiations and contract administration has assured a direct and potentially powerful role for the state. The central administration faces the task of searching out overarching policies and procedures that account for the total institution with a possible diminution in the recognition of the uniqueness of the various campuses. In a parallel situation, the union leadership has had to face a similar difficulty in order to present at the bargaining table a position suitable for its diverse constituency and to maintain an effective organization for members holding a wide diversity of values and interests.

Unionism in SUNY

The professional personnel of the university were the last to organize under the Taylor Law. It was not until late January 1971 that the bargaining unit had been determined and a bargaining agent chosen and recognized by PERB. The unit determination issue delayed the election of an agent and was significant for this analysis because of its implications for the organization of the university and its relationship with the state. A single bargaining unit would reinforce the existing centralization of the university's administration.

Three issues had to be resolved, each of which has had a significance for the character of the collective bargaining-relationships which followed: the size of the unit geographically, the categories of employees to be included and the organizations qualified to participate in the election. The first of these was decided by including all campuses in one large unit, and the second by including in it both faculty members and nonteaching professional staff members (NTP's), about 14,500 of which two-thirds were academicians. Responding to the issue of qualified organizations, PERB recognized the right of the university-wide faculty senate to enter the election. The State University Federation of Teachers (SUFT) made an unsuccessful court challenge of this ruling, but in the end the senate leadership chose not to enter the election. Instead, some of its members assisted in the formation of a Senate Professional Association (SPA) that combined elements of both the senate and an association representing the professional staff.

During the election campaign, which occurred in late 1970, SPA entered into an informal association with the National Education Association and its state affiliate, the New York State Teachers Association under which it received financial and organizational support. It carried the endorsement of many senior faculty members and the leadership of the NTP's. SPA won a run-off election against SUFT in January 1971. About the same time, it affiliated formally with the NEA and State Teachers Association. Negotiations extended over the summer and resulted finally in a contract approved in late August 1971 and effective from July 1 of that year to June 30, 1974.

The PERB determination for one large unit led almost immediately to internal problems for the new union, problems that have affected also the relationships with the state government and the university's central administration. Fundamentally these had to do with the reconciliation of widely divergent constituencies in which interests and value commitments of faculty members differed from those of other professionals, those of the university centers from those of the four-year and two-year colleges and those of the health science centers from those in other academic programs. All of this

was further complicated by the merger of the State Teachers Association with the United Federation of Teachers and subsequent pressure for SPA to merge with its rival, SUFT. In time formal negotiations were initiated and in spring 1973 a new, combined union emerged and assumed the name of United University Professions (UUP).

Despite its problems, the one large unit has continued. The UUP negotiated a second contract that runs until June 1976. It survived a representation challenge to PERB that sought to break off the NTP's. It has gained in political strength within the state through its association with the combined NEA-AFT New York State United Teachers in which Albert Shanker serves as an active leader and president. Yet, while membership has increased substantially, it includes only about one-third of the approximately 14,500 persons in the unit. There remain substantial differences in attitudes toward and in support of the UUP among the campuses. Its major strength comes from the two-year and four-year colleges and greatest resistance in terms of membership from the university and health science centers. In terms of this, one can say with considerable confidence that it is not viewed as fully representative of the university's professional personnel, a situation that tends to enhance the voice of central administration as the spokesman for the university in the view of officers and agencies of state government.

## Impact of Unionism

In the perspective of nearly five years of professional unionism and two negotiated contracts, the question now arises as to if, how much and in what ways collective bargaining has impacted upon the manner in which the university relates to the state government. Has professional unionism made a significant difference? At this point in their observations, the authors have to reply in the affirmative. Fundamentally and pervasively, collective bargaining is proving a force in support of the centralization of decision making within the university, in organizational affairs especially, but also incipiently into academic policy making, since the two can never be really separated. And in the process it has encouraged more direct involvement in university affairs by agencies of the executive branch of the state government.

The observations in this section derive from a Carnegie-sponsored study of the New York situation conducted during the spring and summer of 1975. The focus of the study was upon the impact of collective bargaining on the relationships between the State University of New York and the various agencies of the state government.

The quality and degree of collective bargaining's influence upon state university-state government relationships has complexities and subtleties beyond the points reported here. Certainly, one can speculate about the union's influence upon the attitudes and values of faculty members as they recognize more directly their status as state employees. Conversely, it appears inevitable that legislative officials and executive officers in state government will view the university and its academic/professional personnel differently. We do not explore fully in this paper, as another example, the implications of unionism as a "third bureaucracy" interrelating in the state capital with that of the state government and of the university; nor do we examine in any detail the implications for the university trustees of negotiations between the union and an office of state government.

What follows in this section constitutes the preliminary generalizations growing out of the analysis of data for the study. These generalizations portray the perceptions and observations made during interviews with more than 50 individuals in the legislative and executive branches of state government, in the central administration of the university, in the union, both in the capital and on three selected campuses, and in administrative posts on local campuses.

Overall, the responses contained an interesting dualism. On the one hand, evidence of impact came through clearly; while on the other, it was reiterated frequently that much of the ongoing operation of the university continues in ways not affected by collective bargaining. In part, the latter condition reflects a relatively weak union frequently not viewed as representing the total constituency. But more significantly the negotiation of the contracts and their administration has remained to a high degree within the confines of two special offices, one for the university and the other for the state. These offices interact regularly with each other but tend to have only consultative interactions with other officers in their organizations.

Nonetheless, the impact of collective bargaining upon the university operation is both direct and very significant. For example, more than three-fourths of the total budget consists of personnel costs, a very substantial portion of which are negotiated by the UUP. The result has been a tendency for the administrative staff of the university to leave the initiative in these matters up to contract negotiations. But salaries and fringe benefits remain a potent element in the ability of the university to attract and hold good academic and other professional staff members. Increases in these costs also have to be met by reductions in other outlays such as those for the library, laboratories and other facilities important for the quality of instruction and research. In this sense, therefore, one finds an agency of the state government, namely the OER, directly involved in decisions that affect the welfare of the entire university. Despite a close consultative relationship with central administration, OER has little direct contact with campus presidents and administrative heads who have the most immediate responsibilities for the operation of the university.

In a similar manner, personnel policies related to employment, evaluation and promotion of faculty and NTP's have become in part a matter for negotiated contracts and likely will become increasingly so. While to date the contract has dealt primarily with the procedural aspects of personnel policies to assure equitable treatment, the lack of emphasis upon substance likely will prove a difficult one to maintain. Already the contract has forced a university-wide effort to clarify and formalize personnel procedures and records with a resulting increase in staffing costs and intrusions upon administrative time. Again the university administration at the state and local levels finds itself influenced in policy and practice as a result of negotiations carried out by an office of the state government.

The importance of this development lies in precedents set. While the interviews supported a general satisfaction within the central administration and the board of trustees with the present management, acquiescence in the primary role of the OER has established a procedure that will carry on beyond the individuals currently handling contract negotiations. New personnel in the OER holding a different set of attitudes about the university and/or a different sense of its academic functions could result in a significant change in policy. The existing organizational structure, therefore, could facilitate

a very substantial increase in state government control over the operation of the university, especially if the scope of bargaining were to broaden.

Furthermore, when one views the role of the OER as an agent for the governor in negotiations, one can anticipate that changes in the state's executive well may result in changes in attitude and in policy evidenced in the bargaining. The consequences very well may appear in bargaining decisions that have a bearing upon the university. Thus, for example, a governor oriented toward supporting labor in a time of economic recession might favor an agency shop agreement in lieu of a major salary increase. Or, illustratively, the OER in such a circumstance might concur in distribution of economic benefits that support the two-year and four-year colleges, wherein lies the major support for the union, at the expense of the university centers. This in turn well could alter the nature of the university in a fundamental way. Although this is speculation, one can conceive that a governor might prove more responsive to the political influence of a university union aligned with a statewide labor organization. At the present time, however, such consequences as these have not emerged and negotiations on the side of the state have reflected a balance of input from both the central administration of SUNY and the state division of the budget to the OER in its stance at the bargaining table.

If there has been any constraint upon the university by the system of bargaining, it lies in its tendency to support the centralization of authority. Presidents and other campus administrators have no direct input and little apparent influence upon the bargaining decisions, yet they face in large part responsibility for the administration of provisions of the contract. They, more than the staff of the central administration, must meet face-to-face with union heads, develop initial reactions to grievances and handle the immediate administrative problems and relationships related to negotiated contracts. Paralleling their administrative counterparts, campus faculty leaders within the union must normally seek to establish appropriate and effective relations with local campus administrators within the terms of agreements negotiated at the state level. The result in New York, as in other statewide systems, is the development of two essentially bureaucratic systems functioning in tandem, albeit at times not in harmony. On the one hand the administrators find themselves forced increasingly to look to the central administration through the established organizational channels for directions and authorization related to campus policies and actions. On the other, faculty leaders and their counterparts for the nonteaching professional staff find it necessary to deal with union headquarters located in the state capital on many matters previously dealt with through campus governing bodies and internal administrative channels.

The consequence of the shift in internal university relationships brought about by a statewide union is not only a centralization in policy making but a deference to policies agreed upon by leaders in both the university and the union bureaucratically distant from local conditions and sentiments. Furthermore, this policy determination takes place increasingly through a developing personal relationship among university and union leaders and officials of the state government. In the long run, one can anticipate a loss of local campus autonomy, although one that probably is not out of line with the broader developments associated with government regulation and control in other segments of education and the general society.

Conclusions

In summary, then, the following points can be made about the consequences of collective bargaining on the part of professional personnel in the university.

(1) Despite comments to the effect that collective bargaining has not altered ongoing relationships between the university and offices of the state government, it does seem very likely, if not inevitable, that bargaining and a negotiated contract will make a significant difference. As the scope of negotiations and resulting contract broadens, the central administration and the division of the budget are likely to lose control over decision making that affects the budget, for one example, just as the consequences of contractual agreements related to salaries, fringe benefits, etc., and personnel policies related to promotion, tenure and retrenchment are likely to place constraints on long range planning. Loss of control over economic benefits and formalization of personnel policies cannot help but undermine to a lesser or greater degree administrative leverage essential for administrative authority. As a consequence, whatever the role of central administration at the bargaining table, it would appear that essential decision making will take place more and more between the UUP and the OER as the scope of bargaining increases. A successful effort to delimit "terms and conditions of employment," such as the removal from bargaining of governance matters, urged by the regents and apparently having some support in the PERB, looms as the only counterforce in this regard.

The sense of this analysis, therefore, goes against the comments quite frequently made during interviews to the effect that the chancellor spoke for the total university, including its professional personnel. This view found expression especially among the legislators interviewed. Evidences of specific situations, in contrast, support the view that the contract as a reality and bargaining as a kind of pervasive concern in terms of precedents and procedures do permeate the relationships between SUNY and offices of state government and will do so more in the future, especially if the union gains strength and effectiveness in pressing its interests.

(2) One observer commented during the interviewing that "collective bargaining has given the political leadership of the state a larger potential for control over SUNY. This was an inadvertent outcome in that no one really anticipated an impact upon education at the time of the original Taylor commission investigation, let alone on the state university." A member of central administration actively involved reflected that the OER had exerted more control over the university than anticipated. All input for this study supported the thesis that collective bargaining has reinforced the trend toward increased centralization and state influence over public higher education. Furthermore, collective bargaining has proven a force toward more bureaucratic procedures and a homogenization of public higher education that has accompanied the movement toward greater state involvement. This generalization is supported by a number of specific conditions identified during the interviews.

One major participant in state government at the time the university professional staff first organized noted that some of the problems in negotiations derived from the situation that faculty "were not viewed as state employees in some quarters." In contrast, speaking as a member of the executive staff of the state government, he stated: "We never looked upon

them [the faculty] as being anything other than state employees, paid from state funds and in the state retirement system." The situation in which OER, representing the governor, bargained with the UUP, representing the professional staff, clearly established the correctness of this latter view. And even though some legislators did speak of the faculty as "professionals" employed by the trustees, there never emerged from the interviews any support for an alternative to the OER in the bargaining. Thus, practice has provided a quite final answer to this question, regardless of preferences and perceptions. And as employees of the state, professional staff in voting for unionization accepted this status and the consequences of increased immersement in the milieu of policy and practice associated with this status.

Interviews brought out evidence of state government pressure regarding matters that, in its view, should be negotiated. This has proven a subtle matter related to the OER's sensitivity to the wishes of the governor and thus raises the suggestion that political considerations well may intrude. It certainly suggests that a governor elected with effective labor support may prove more responsive to UUP interests as they are related to the statewide teachers association. It reflects also the fact that the division of the budget has representatives to the state's negotiation team with a position and an influence equal if not more potent than those of the central administration of SUNY. It is evidenced in the fact that an interest on the part of audit and control in definitions of workload led to the development of a position paper by the staff of the chancellor. It is bound to be reflected in the experience of the OER as the third-step party in grievance procedures.

One consequence of this involvement of state government has been an inevitable increase in decisions made by officials of the university and state government located in the state capital who lack an experiential sense of conditions on local campuses. Thus, for example, one finds the basis for such a conflict of interest in a budget division press for establishing salary maxima for grades as a contractual matter and the university's need for flexibility in recognizing academic excellence.

Another consequence lies in an inevitable press on the part of OER supported by other state agencies to "keep the university in line" with the rest of the state government.. This applies to economic benefits bargained for and agreed to with the union and to grievance processes that assure the "rights of individuals" without regard to academic traditions related to peer evaluation and achievement in an academician's field of specialization. As one interview stated it, collective bargaining has given the state government a means to achieve systemization in what he viewed as a previously chaotic way of handling personnel affairs.

(3) One can anticipate that over time there will develop among leaders of the UUP and staff members attached to its central office, officers of Central Administration and officials of the state government an informal interaction that will affect decision making for the university. Due in part to the weakness of the union and changes in its staff during the past five years, this remains incipient. Yet, interviews confirmed the existence of some informal interaction between the UUP staff and that of the OER, primarily on matters related to grievances. Certainly, this kind of communication has taken place between the staffs of the central administration and the OER. Finally, along with the regular meetings provided for in the contracts, the chancellor does meet occasionally with union leaders to discuss specific questions (more the case in recent years). This situation reinforces a congruence of individuals distant from the local campuses in significant

decision making leading to agreements that have an impact at the campus level. As such, this situation can contribute to a further centralization of control of the university.

(4) While collective bargaining has proven a force supporting the centralization of public higher education in New York and the increase in state government involvement, this has not lacked constructive outcomes. Accepting the actuality of more state government concern about the management of its institutions and of a greater determination on its part to improve efficiency and coordination in the use of public funds, bargaining can be said to have led to better administration. Against the weakening of traditional academic values and policies for personnel affairs, for example, in the last five years in New York, university administrators have found it necessary to adopt arrangements that do support consistency and equity in their dealings with professional personnel. The establishment of a formal grievance process to assure consistent, agreed-upon procedures illustrates this situation. Certainly in the future the very existence of a union will provide a brake against impersonal approaches to long-range planning, especially where retrenchment becomes necessary, on the part of officers in central administration and in agencies of state government, such as the budget division. Furthermore, as one aspect of collective bargaining, faculty and NTP's have a legitimatized, formal mechanism to assure that their interests receive due regard and protection in the inevitable pressures for economy bound to come from the state government in times of general financial retrenchment. Related to this, the negotiation of terms and conditions of employment tends to bring rational determination policies and practices into the open to be faced directly. This has already occurred in the efforts underway as a consequence of bargaining to establish an appropriate system for handling the clinical income of professionals at the health science centers.

(5) The perceptions expressed during the interviews with several individuals in state government to the effect that the central administration and the union hold a unity of interest in the university in competition with the interests of the legislature and executive departments suggests at least the potential of collaboration in pressing jointly for financial support. The fact that the union negotiates with the OER mitigates to a degree an adversarial stance toward the central administration. While the chancellor and union officers do confer from time to time, it will take greater maturity within the union side before such collaboration becomes effective. However, one recent example is found in a joint central administration-UUP position against the division of the budget in support of the academic status of librarians.

Clearly, the administration and the union have much in common in this regard. Both have an interest in a good salary structure. Both have a concern with the quality of equipment and facilities available. Both wish to maintain high enrollments of qualified students. The counterforce to this collaboration probably emanates from the unique relationship of SUNY with the governor, within which the chancellor is viewed as an appointee of the state's chief executive. Looking to the future, one can judge that much of the consequence of collective bargaining will depend upon the personal qualities and political philosophy of the governor and his view of the university and upon the posture of the union leadership.

(6) One can anticipate an increase in the political nature of decision making as a consequence of unionism. The interviews etched clearly the fact

that the UUP gains political strength through its affiliation with the merged AFT/NEA New York State United Teachers union that has an active lobby in Albany. There has been some speculation that the successful bargaining of the recent salary increase was related to the political relationships involved here, although the governor and chancellor are given credit for the critical decision that made agreement possible. Certainly, the combined teachers' union does pose to legislators and other politicians a significant organization that has demonstrated a capacity for effective political action. Whatever the situation, it is clear that under unionization decisions that involve the state government have a greater potential for involving political considerations.

(7) Although a number of respondents, especially in the legislature, reacted negatively to a union of faculty members and other professional staff, none considered this a significant negative factor in the relationships between the university and state government. Collective bargaining apparently has become a common enough situation for public employees, many of whom have a professional status. The general view attributed the recent leveling off of support and increase in supervision primarily to the recession and need for economies in the state government as a whole. A much more negative reaction accompanied legislative dismay with the student-faculty radicalism of the late 1960s and early 1970s and the perceived ineffective response of the university administration to acts of violence.

(8) Any assessment of the impact of collective bargaining must take into account the interests of students. There is some evidence of incipient student organization on a statewide basis directed toward a possible parallel union. Students do have a representative present at the regular trustee meetings. Yet, little mention was made about the impact of collective bargaining upon the rights of students and their potential as conceivably a fourth force in state-university affairs. This remains a dormant question at this time.

(9) Finally, the interviews failed to elicit a recognition of the implications that collective bargaining holds for long-range planning, especially when carried out within the constraints of a "steady-state" economy or, as currently operative, one of consolidation and potential retrenchment. This looms as a very "mixed bag" at best. Under current practice, planning constitutes a major concern for the board of trustees, but must be coordinated with the planning for all education in the state carried out by the state education department, as the executive arm of the board of regents, and reviewed by the governor. At the same time, the trustees face complexities that stem from collective bargaining. If the scope of negotiations broadens, as most observers anticipate, existing structures and functions will tend to be increasingly "locked in" by the natural union commitment to its present constituency and membership. In any event, changes having consequences for "conditions of employment" (which the union likely will view in broad terms) will require consultation if not formal negotiations, especially as they hold implications for job security, promotion, tenure and similar union constituency concerns. These are affected directly or indirectly by changes in educational programs, consolidation of programs and functions within and among the campuses, shifts in allocation of resources and similar components of the planning process in times other than those of expansion. To compound the difficulties, as planning decisions involve the union and especially as issues raised find their way to the negotiations table, the OER enters the arena carrying with it not only a normal concern for policies and practices

in other state agencies but the views of the governor and possibly the legislature. These concerns well may hold a quite different orientation to the future than those of the trustees. The latter well may find their planning commitments to broad educational and other academic policies mitigated by the more immediate political and financial interests of the executive and legislative branches of state government.

In concluding this initial summary of our New York State study we can stress a number of elements in the situation that warrant attention in surveying the implications of professional unionism in a public system of higher education. We have stressed the press of collective bargaining toward a greater centralization of control and loss of campus and university autonomy, especially with regard to fiscal matters and personnel policies. We have noted the trend toward increasing formalization of relationships. We can anticipate a conservative force inherent in the union commitment to the status quo in terms of the interests of its current membership combined with a parallel civil service orientation on the part of other state agencies. We have mentioned the political impact of a university union affiliation with statewide teacher unions. We have noted the potential for personal relationships exercised in crucial decision making by officers in the state capital remote from the operational realities of campuses. We have suggested the potential for union-administration cooperation in pressing the interests of the university against the state government. We have stressed that the impact of these and related conditions will be to alter in many ways how the university as an institution relates to the state government.

Within this general situation, we view the most direct and visible impact of collective bargaining in the establishment of the office of employee relations. This office, serving as an agent of the governor, has by means of collective bargaining intruded state government directly into very significant aspects of the university's operations. While at least theoretically subject to challenge in the courts or before PERB, its position as bargaining agent remains secure, unquestioned in this role by everyone we interviewed. Yet, the concomitant and, in our view, major implication of this role leads directly to a question of the position of the board of trustees. One cannot avoid speculating that if the scope of matters negotiated at the bargaining table expands, the authority of the board as a corporate body will decrease. Future developments will tell the tale, of course. But one can say with assurance that as the corporate authority of the governing board diminishes, this university -- and other public universities in a similar context -- will become increasingly less an institution with a unique position and more another agency of the state government.

# STATE-INSTITUTIONAL RELATIONS UNDER FACULTY COLLECTIVE BARGAINING IN PENNSYLVANIA

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Faculty collective bargaining has developed rapidly in Pennsylvania's public institutions of higher education since the adoption of the Public Employee Relations Act (Act 195) in 1970. As of January 1976, faculty bargaining has been adopted at all but five of Pennsylvania's 32 public post-secondary educational institutions. This pattern is representative of the state's public sector in general. Almost all of Pennsylvania's state-level public employees are now unionized. The state government has taken a strong interest in developing positive public employee relations, and collective bargaining has received considerable attention at the highest levels. Pennsylvania therefore represents a useful case study for analyzing the relationship between the state and academic institutions under faculty collective bargaining.[1]

The analysis that follows is divided into four sections. The first is a discussion of the legal and political environment and the incidence and nature of faculty bargaining in Pennsylvania. The second and major section focuses on state-institution relations under faculty bargaining in Pennsylvania's state colleges and university, the only institutions of higher education directly owned and controlled by the state. A third section briefly reviews state-institution relations under faculty bargaining in the state-related universities and the community colleges. The fourth and final section is a discussion of the findings.

## AN OVERVIEW OF FACULTY COLLECTIVE BARGAINING ACTIVITY IN PENNSYLVANIA

### The Legal and Political Environment for Public Sector Collective Bargaining in Pennsylvania:

Collective bargaining in Pennsylvania's public sector is governed by "The Public Employee Relations Act" (Act 195) of October 1970. There is no need to review Act 195 in detail. The provisions are standard in most respects to those of other state public employee relations laws that have emerged since 1965. There are three provisions, however, that are worthy of note.

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[1] This paper is one of the products of a comprehensive field study of faculty collective bargaining activity in Pennsylvania, codirected by Walter J. Gershenfeld, director of the Temple University Center for Labor and Manpower Studies, and Kenneth P. Mortimer of the Pennsylvania State University Center for the Study of Higher Education. The authors are indebted to Professor Mortimer for his advice in the preparation and review of the paper.

First, Act 195 provides for a limited right to strike for most categories of public employees. There has been some concern expressed over the incidence of strikes in the public school sector, but strikes have not been a major problem in higher education. Faculty strikes have occurred at only five of Pennsylvania's public institutions of higher education. All faculty strikes have occurred at community colleges.

Second, Act 195 is one of the few state statutes to specify a set of nonnegotiable "management rights." Public employers are required to "meet and discuss" over "inherent managerial policy" but need not bargain over issues so defined. The Pennsylvania Labor Relations Board (PLRB) has handed down two major rulings in this area, both favoring the management position. In one of these cases, however, the PLRB was subsequently overruled by the state supreme court, which remanded the scope issue to the PLRB with guidance that[2]

> Where an item of dispute is a matter of fundamental concern to the employees' interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining . . . simply because it may touch upon basic policy.
>
> It is the duty of the board [PLRB] in the first instance, and the courts thereafter, to determine whether the impact of the issue on the interest of the employee in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole.

The parties are understandably confused as to the import of this decision. The consensus appears to be that the stage is set for issue-by-issue litigation of what is actually negotiable.

Third, the act directs the PLRB to take into consideration the effects of over-fragmentation of bargaining units and "when the Commonwealth is the employer, it will be bargaining on a statewide basis unless issues involve working conditions peculiar to a given governmental employee locale" [our emphasis]. These provisions have been interpreted by both the PLRB and the state administration as a mandate for multicampus bargaining units in the higher education sector. To date, there are no faculty collective bargaining arrangements in Pennsylvania in which multicampus institutions have been divided into separate bargaining units.

The passage of Act 195 and subsequent state administration support for public employee organizations have led to a favorable legal and political climate for public sector collective bargaining in Pennsylvania. At this writing almost all of the Commonwealth's 100,000 state-level public employees are under contract. A special joint committee of the Pennsylvania General

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[2] This case involved the public school district of State College, Pennsylvania, not the state colleges and university. (State College Education Association vs. Pennsylvania Labor Relations Board, April 1975).

Assembly concluded in late 1974 that Act 195 was functioning well and that most of the problems experienced thus far were related to the complexities of administering the law, rather than to the law itself.[3]

## Incidence and Nature of Faculty Collective Bargaining in Pennsylvania

Pennsylvania ranks fourth, behind New York, Michigan and New Jersey, in the number of unionized campuses.[4] There are only five nonunionized post-secondary institutions remaining in the public sector, and one of them, the University of Pittsburgh, has recently completed unit determination hearings.

Pennsylvania's public institutions of higher education are formally divided into three sectors. The first is a group of four "state-related" universities, each with an autonomous governing board but heavily dependent upon annual state appropriations. Lincoln University, Temple University and the University of Pittsburgh are former private institutions that have assumed state-related status over the past decade. The Pennsylvania State University, a land-grant institution, has always had formal ties with the state. Lincoln and Temple are under contract. The University of Pittsburgh is expected to hold an election shortly. The Pennsylvania State University received a petition for bargaining unit recognition in October 1975.

The second public higher education sector is comprised of 14 state-owned institutions: 13 state colleges and Indiana University of Pennsylvania. Collective bargaining in this sector is discussed in detail in the next section.

Finally, Pennsylvania has 14 community colleges, governed by local boards and financed on a fairly standard formula basis: one-third state funds, one-third local funds and one-third tuition. Eleven of these have adopted collective bargaining and two others bargain informally with their faculties. While each community college negotiates at the local level, the secretary of education has not "ruled out" the possibility of a single community college bargaining unit within the next decade.[5]

Pennsylvania's private higher education sector is comprised of approximately 120 two- and four-year institutions. There have been eight collective bargaining elections, five of which have resulted in a faculty rejection of unionization. Moore College of Art, Robert Morris College and the University

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[3] "Findings of the Special Joint Legislative Committee on Effect of Pennsylvania Public Sector Bargaining Law," Government Employee Relations Report 587 (Jan. 6, 1975) p. E 5.

[4] "Special Report No. 12: 243 Institutions with 357 Campuses have Collective Bargaining Agents," Washington: Academic Collective Bargaining Information Service, February 1975.

[5] Testimony during the hearings on the Pennsylvania State University branch campus faculty petition for bargaining unit recognition, Oct. 26, 1972.

of Scranton are now under contract. Formal bargaining also takes place at Elizabethtown College without a certification, and a number of private institutions report "informal" bargaining with their faculties.

## FACULTY COLLECTIVE BARGAINING IN THE PENNSYLVANIA STATE COLLEGES AND UNIVERSITY

### History and Organization of the State Colleges and University

Pennsylvania's 14 state-owned institutions of higher education originated as privately owned normal schools. All but one was established by 1900. Between 1913-1932 the state assumed sole ownership of these institutions and converted each of them into state teachers colleges with the power to confer the bachelor's degree. The postwar demand for public higher education led to enrollment growth and some activity in the area of graduate education. In 1960 the 14 state-owned institutions were accorded the status of state colleges.[6]

The 1960s was a period of rapid growth and curricular diversification. In 1966, Indiana State College, the largest of the 14, was converted to a state university with the authority to grant the doctorate. The second half of the decade witnessed a large influx of new faculty across the system, particularly in the liberal arts.

Rapid growth and development of state teachers colleges creates a number of stresses, particularly for their traditional faculties, whose status and security may be threatened. The Pennsylvania state colleges have had another problem, however, which may have been even more serious in the long run. Pennsylvania has a well-developed and politically supported private higher education sector. Moreover, the four state-related universities have been powerful competitors for limited state higher education funds. The 1971 Master Plan for Higher Education stressed the importance of spreading the higher education mission across the public and private sectors, placing clear limits on the functional expansion of the state colleges and university and renewing a commitment to a broad distribution of state higher education funds. At this point the prospects for the conversion of additional state colleges to university status appear rather dim.

The 1960s also witnessed a general redefinition and expansion of the state government role in the area of higher education and an increased emphasis on coordination. The state board of education was given broad responsibility for planning and coordination. The department of public instruction (now the department of education) was reorganized and an office of higher education created.

In 1964, the new state board of education contracted with Earl J. McGrath to examine the statewide organization of the state-owned colleges. McGrath reported in May 1965 that policy-making responsibility for the state colleges was "scattered," with no clear division of labor between the two

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[6]Saul Sack. History of Higher Education in Pennsylvania, Harrisburg, Pa., the Pennsylvania Historical and Museum Commission, 1963, pp. 524-546.

major policy-making bodies, i.e., the state board of education and the board of presidents of the state colleges. With regard to the administration of the colleges, McGrath found that there were excessive administrative and fiscal controls at the state level, leaving the colleges with insufficient autonomy to carry out their respective missions without interference from other agencies of the state government.[7]

McGrath's recommendations for a more unified policy-making structure as well as greater administrative and fiscal autonomy at the institutional level were included in the board of education's 1967 Master Plan for Higher Education[8] and were ultimately embodied in Act 13 of 1970. Act 13, popularly referred to as the "State College Autonomy Act," provided for a board of state college and university directors (BSCUD) "to establish broad fiscal, personnel and educational policies under which the state colleges shall operate." The once influential board of state college and university presidents was given responsibility for advising the new board. In addition, the individual presidents were given primary responsibility for administering their institutions "subject to the stated authority" of the BSCUD and the individual boards of trustees. As will be seen in the pages that follow, however, the adoption of collective bargaining did much to disrupt the configuration of policy making and administrative responsibilities outlined in Act 13.

Organizing for Collective Bargaining:

Through a largely separate series of events, the Pennsylvania Public Employee Relations Act (Act 195) was signed into law a few months after the enactment of Pennsylvania Act 13. The Association of Pennsylvania State College and University Faculties (APSCUF) and the Pennsylvania Association of Higher Education (PAHE), the higher education component of the Pennsylvania State Education Association (PSEA), worked together for the passage of Act 195 and affiliated in July 1970, when the act was signed into law. When the enabling legislation became effective in October 1970, APSCUF/PAHE -- drawing primarily upon the financial and organizational resources of PSEA -- was already prepared for an organizing campaign.

With signature cards in hand, APSCUF/PAHE went to the governor's office of administration in early 1971 to discuss the definition of the prospective faculty bargaining unit. Lieutenant Governor Ernest P. Kline, serving as the governor's representative, became personally involved in the discussions that ensued. As previously noted, the administration held firmly to its policy of statewide bargaining units, and the proposal for a multicampus bargaining arrangement was not contested. The state administration broke from its policy of statewide occupational bargaining units, however, by agreeing to the inclusion of state college librarians in the faculty bargaining unit. The state college presidents acquiesced to the inclusion of department chairpersons in exchange for the exclusion of nonteaching professionals (NTP's). It

[7] Earl J. McGrath, "The Organization of the State Colleges within the Commonwealth of Pennsylvania," Harrisburg, Pa.: State Board of Education, May 1965, p. 4.

[8] A Master Plan for Higher Education in Pennsylvania, Harrisburg, Pa.: State Board of Education, January 1967, pp. 32-34.

was later agreed that the NTP's, primarily in the area of student affairs, should form a separate unit.[9]

The election campaign during the spring and summer of 1971, involved two major competitors, APSCUF/PAHE and the American Association of University Professors (AAUP). The American Federation of Teachers (AFT) and a "no representative" organization also entered the campaign. The latter two were relatively ineffective on most campuses, however, and wound up with a combined total of nine percent of the vote, compared with 55.5 percent for APSCUF/PAHE and 35.4 percent for the AAUP.[10]

During the campaign APSCUF/PAHE stressed a history of faculty representation in the state capital. The AAUP stressed its status as a national professional association and its role as a guardian of academic freedom. A postelection survey of state college faculty indicates that faculty representation in the state capital was clearly foremost in the minds of most voters. Eighty-seven percent of all voters viewed APSCUF/PAHE as the association with the greatest lobbying potential in the state capital. A break-down of voter attitudes by voting behavior indicated that APSCUF/PAHE received its support from faculty who were first seeking influence with the governor and legislature.[11]

## Negotiating the First Contract

Negotiations for a state college and university faculty contract began in November 1971. The governor selected a Philadelphia-based attorney to head the management negotiating team. The team also included personnel officers from the governor's office of administration and the department of education, an assistant deputy commissioner of higher education and a staff analyst from the bureau of personnel in the office of administration. Two state college vice presidents served as liaisons with the board of state college and university presidents. The team was reportedly dominated by labor relations professionals with minimal state college experience whose primary concerns were not education. A new secretary and deputy secretary of education, who assumed their posts in January 1972, had no previous experience with labor relations and adopted a hands-off policy toward the negotiations.[12]

A contract emerged, without resort to impasse procedures, in July 1972,

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[9] After a protracted effort by the union to merge the NTP's into the faculty unit, the parties finally agreed that NTP's would be covered under the second (1974) faculty contract (although with different rank and pay scales). In the spring of 1975, a number of NTP's were granted status as teaching faculty, thereby substantially reducing the size of the NTP group.

[10] G. Gregory Lozier and Kenneth P. Mortimer. Anatomy of a Collective Bargaining Election in Pennsylvania's State-Owned Colleges. University Park, Pa.: Center for the Study of Higher Education, the Pennsylvania State University, 1974, p. 4.

[11] Ibid, pp. 98 and 105.

[12] David W. Hornbeck. "Collective Negotiations in Higher Education." Collective Negotiations in Education: Progress and Prospects, edited by Michael Dudra. Loretto, Pa.: Graduate Program in Industrial Relations, Saint Francis College, 1974, p. 11.

and was ratified by the state college and university faculties in late August. The contract was relatively comprehensive in scope. In addition to a highly favorable package of salary and fringe benefits, the contract included provisions relating to a number of academic personnel matters. Policies and procedures for faculty participation were specified for faculty appointments, promotions, tenure and evaluation. Limits were placed on faculty appointment and prerogatives for administrators. Workload equivalencies for various categories of teaching faculty were spelled out in some detail.

In the area of governance several provisions were worthy of note. In addition to a management rights clause, the contract provided for local "meet and discuss" arrangements as stipulated by Act 195. The Commonwealth also agreed to "meet and discuss" with APSCUF/PAHE over any programs or policy changes that might lead to retrenchment. Another provision redefined the duties of the department chairmen who, as bargaining unit members, could no longer be considered "management." Provision was made for a faculty curriculum committee at each campus, but the roles of senates were implicitly left to local determination. Finally, the contract included a grievance procedure, culminating with binding arbitration, and a no-strike/no-lock-out agreement.

## Contract Administration
## The View from the State Capitol

The contract became effective in September 1972, with certain personnel policy provisions retroactive to the previous academic year. While the negotiations had been conducted primarily by the governor's office, the department of education was given responsibility for administering the contract. Deputy Secretary of Education David Hornbeck has publicly stated that the department initially adopted a strict "constructionist" view toward the collective bargaining relationship. "If any basis could be found in the contract for denying the claims of the union, we asserted that basis and denied those claims." Contract administration was entrusted to the department's personnel and labor relations staffs, and neither the secretary nor the deputy secretary had much contact with APSCUF/PAHE during the first year.[13]

It is difficult to identify the precise point at which the department began to modify its posture. Deputy Secretary Hornbeck has indicated, however, that one of the major reasons for a change in attitude related to the outcomes of several grievance cases. "Toward the end of the first year," notes Hornbeck, "we found ourselves with a string of arbitration awards -- seven if I remember correctly -- all of which were against us. . . It was the grievance procedure and its results that first led us to reconsider our position [toward the collective bargaining relationship].[14]

Another factor that appears to have influenced the department's change of posture toward the collective bargaining relationship was the fact that the department's leadership was then in the process of establishing a new set of priorities for education in Pennsylvania. Included in those priorities were the goals of redefining the missions and improving the quality of the state colleges and university. Since the faculty union now appeared to be an important new force in the state colleges and university, the department decided that a positive relationship with APSCUF/PAHE would contribute to the department's efforts to pursue these goals.

[13] Ibid., p. 11.

[14] Ibid., p. 12.

One of the first outcomes of the department's reassessment was a decision that the department's top management had to become involved in the negotiations for the second APSCUF/PAHE contract. Having recognized the potential impact of collective bargaining on the governance of the state college and university system, the department also decided to press for the appointment of a chief negotiator "who understood the world of higher education." The secretary of education therefore persuaded the governor to select a consultant with experience in the field of education.[15]

In September 1973, approximately one year before the termination date of the first contract, the department formed a labor policy committee to prepare for the second round of negotiations, due to start in early 1974. The committee was chaired by the deputy secretary of education and, with the exception of a state college president, was staffed entirely by the department of education. The labor policy committee drafted a contract proposal that was placed on the table by the management team at the first formal negotiating session in February 1974. The department of education's interest and involvement in the formulation of the second contract symbolized a new sense of seriousness about collective bargaining and a desire to work with the faculty union in the pursuit of the department's goals for the state colleges and university.

The consequences of these developments for the role of the board of state college and university directors are worthy of note. The board has had little involvement in contract negotiations. In the case of the contract proposal prepared by the labor policy committee, the board appears to have had little or no input prior to the submission of the document to the faculty bargaining team.

The board's lack of involvement in the collective bargaining relationship has also had a major impact on their ability to influence events between contract negotiations. In the fall of 1973, it became apparent that the legislature might not appropriate sufficient additional funds to cover negotiated faculty salary increases stipulated in the first contract. Faced with the possibility that the colleges would have to absorb the salary increases without a supplemental appropriation, the board adopted a resolution that would ultimately have resulted in nonrenewals for all nontenured faculty and the possible dismissal of some faculty who already held tenure. The secretary of education was successful in obtaining a ruling from the attorney general's office that the board of state college and university directors did not have the statutory authority to carry out this resolution. The board was told, in effect, that the collective bargaining agreement superseded the board's authority and that the department of education was committed to comply with the faculty contract.

On Nov. 28, 1973, the department and the faculty association signed a "Statement of Mutual Understanding" in which it was agreed that there would be no retrenchment during the academic year 1974-75. In exchange, the faculty association agreed to support and participate in a major systemwide and institutional planning effort then in progress in the state colleges and university.

By early 1974, the department of education and the faculty association were clearly moving toward a cooperative relationship at the state level.

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[15] Ibid., p. 12.

While the alignment of interests was not always quite so simple across all issues, both state-level parties shared a basic interest in the centralization of policy making for the state colleges and university. These developments had significant implications for the plan for greater campus autonomy outlined in Act 13 of 1970.

The View from the Campuses: Implications for Campus Autonomy

The presidents of the state colleges and universities have been frustrated by state-level controls for many years. The campus-level perception of external control was further evidenced in 1971 when the state college faculties elected APSCUF/PAHE with an apparent view toward achieving greater influence in the state capital.

At the same time, it has also been noted that the second half of the 1960s witnessed an increased recognition of the need for greater administrative and fiscal autonomy at the campus level, culminating with the enactment of "the State College Autonomy Act" (Act 13) in 1970. The centralized bargaining arrangement adopted in 1971, however, appears to have severely hampered the fulfillment of the goals embodied in that act.

From the campus perspective, neither the presidents nor the faculty have had substantial input into contract negotiations. On the administration side, there have been formal mechanisms for campus-level input. On both the first and second management negotiating teams and the labor policy committee, there has been a state college administrator to serve as a liaison with the presidents. The need for confidentiality during negotiations, however, appears to have minimized communication between the management team and the presidents while negotiations were in progress. Although there was an effort to obtain presidential input during the deliberations of the labor policy committee, many state college administrators are doubtful about the impact of their advice.

On the faculty side the process of obtaining campus-level input is much more complex. APSCUF/PAHE has used a central committee system as well as campus delegates to obtain faculty recommendations during their preparation for negotiations. Once negotiations have begun, however, confidentiality has become as much a concern of the faculty negotiating team as it has of their management counterparts. A vocal faculty minority on some of the campuses complains of the lack of campus-level influence over negotiations, but the large majority of the faculty appear to be unconcerned.

After the first contract was signed in fall 1972, it appears that the presidents were given some latitude in determining how the contract would be administered at the campus level. With little or no experience in collective bargaining, most campuses experienced the same problems of adjustment that occurred at all levels of state government during this period. Neither party was quite sure how to proceed. At one college the president unilaterally established a "rules committee" to administer the contract at that campus. Following a protest from the local faculty association, the department of education directed that procedures for contract administration be discussed with local faculty associations.

The most striking characteristic of campus-level collective bargaining relationships has been the variability across the system. A number of state

college presidents took the initiative to develop a working relationship with their local faculty associations. Others, however, initially attempted to confine the collective bargaining relationship to matters that were addressed in the contract. Events at the state level played an important role in increasing faculty association participation on these campuses. When the state-level parties agreed to cooperate in the statewide planning effort, they also agreed that local faculty associations should participate in planning efforts at the campus level. It was also agreed shortly thereafter that the local faculty associations should participate in the formulation of campus budget recommendations. On some campuses these measures simply resulted in the formalization of already existing relationships. On others, there was a noticeable expansion of faculty association participation in campus governance.

The major forum for the collective bargaining relationship on most campuses has been the "meet and discuss" arrangement called for in the contract. On some campuses the parties have determined that it is in their mutual interest to address local problems at the campus level. In these cases the meet and discuss arrangement has developed into an active arena for consultation between the faculty and administration. In other cases, decisions that might normally be made at the local level have been "pushed upstairs" to the department of education and sometimes to arbitration via the grievance process. So long as such decisions are made off campus, the future of campus autonomy would appear to remain dim.

The systemwide collective bargaining arrangement in the Pennsylvania state colleges and university clearly places substantial constraints on the autonomy of the individual colleges. Many important decisions are now made at the bargaining table, and both state-level parties are pushing for highly standardized policies and procedures. At the same time, the apparent success of the state-level relationship may be attributed, in large part, to the willingness of the two parties to cooperate between contract negotiations. Similarly, the campuses that have experienced the least trauma over collective bargaining are those that have established a working relationship at the local level. The future of campus autonomy under systemwide collective bargaining may well depend upon the ability of the local actors to work cooperatively to resolve local issues at the campus level.

## The 1974 Contract: An Experiment in Union-Management Cooperation at the State Level

Whether or not campus administrators and local union leaders move toward cooperative relationships, it is apparent that their state-level counterparts have continued to move in that direction. The 1974 contract, negotiated between APSCUF and the department of education provides substantial evidence to support this observation.[16]

Chief state negotiator Bernard Ingster has publicly indicated that APSCUF took the lead early in the negotiations (January-July 1974) in estab-

[16] During summer 1974, APSCUF renegotiated its affiliation agreement with PSEA, and the name of the former was changed to "APSCUF Incorporated," dropping PAHE from its title.

lishing a nonadversarial tone. Symbolic of this attitude, both parties agreed from the start to call their sessions "conversations" rather than negotiations.[17] Unlike the first round of negotiations, both parties apparently came to the table well prepared. Unlike the first round, the department of education played a major role in the negotiations, and the department's top management was kept closely informed.

The deputy secretary of education has indicated that the contract that emerged in July 1974 reflected a mutual recognition of the major issues confronting the state colleges and university and a mutual concern for solving those issues.[18] The union accepted a relatively low four percent across-the-board salary increase. In exchange, however, management agreed to annual reopeners on salary with a provision for binding arbitration. In addition, the Commonwealth agreed to delay consideration of retrenchment for an additional year.

The provisions relating to governance reflected both the department's interest in containing the scope of the contract and a recognition of the need for increased faculty association participation in decision making. Instead of introducing increasingly detailed policy and procedural provisions, the parties agreed to a series of statewide committees to work out issues that remained unresolved. The contract provided for a statewide "meet and discuss" arrangement similar to that already operative at the campus level. Significantly, the college presidents were not initially included in this arrangement. In addition, there were provisions for state-level committees to develop statewide guidelines in the areas of teaching evaluation, promotion and tenure. For the moment, at least, the department and the faculty association adopted a view of collective bargaining as an instrument for solving problems in a cooperative manner.[19]

## Prospects for the Future: Financial Pressures and Retrenchment

The events that have occurred since the signing of the second contract make it clear that collective bargaining is only one of several forces likely to influence the future of the state colleges. Two of the most important forces are the general financial pressures experienced by the state in the 1970s and the changing status of public higher education as a funding priority. While a detailed analysis of these forces is beyond the scope of this paper, they provide a useful backdrop for examining the role of the state legislature in financing collective bargaining agreements.

The state legislature has not been intimately involved in the collective bargaining process.[20] The general assembly's status as the funding authority

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[17] "Accord and Conversations," Pennsylvania Education, Oct. 7, 1974, p. 1.

[18] Hornbeck, op. cit. p. 13.

[19] Ibid., p. 17.

[20] The state administration has held that collective bargaining is an executive function, and the legislature appears to have accepted this position. There is a statutory provision for a legislative staff observer at the bargaining table (Act 226, 1974), but it has never, to our knowledge, been implemented. See Ronald G. Leneh, "Act 195--Achievements, Problems, Prospects." Experiences under the Pennsylvania Public Employee Relations Act, edited by Michael Dudra. Loretto, Pa.: Graduate Program in Industrial Relations, Saint Francis College, 1972, pp. 14-15.

for the state requires, however, that it play a role in financing collective bargaining agreements. Both state college and university agreements have contained provisions requiring legislative action prior to the implementation of contract provisions that require additional funding. It has been the governor's practice, however, to implement financial settlements without waiting for legislative action. Supplemental appropriations have generally followed but very late in the fiscal year, creating severe problems for fiscal management at the campus level. Moreover, in an apparent effort to enforce economies on various state agencies (including the state colleges) neither the governor nor the legislature has supported the appropriation of the full amount requested by these agencies for purposes of funding negotiated salary increases.

The combination of salary increases and rising operating costs, without matching increases in appropriations, has forced severe economies on the state colleges and university in the nonpersonnel areas of their budgets. In the spring of 1975, however, the secretary of education announced that the savings achieved in this manner were not sufficient and that the department had therefore developed guidelines for retrenchment of all categories of personnel in the state colleges starting in the fall of 1976. Each college was assigned a "budget deficit," ranging from $676,000 to $1.87 million, upon which it was to base the development of a list of academic, administrative and support personnel to be retrenched in September 1976.

Although the state college and university presidents initially resisted the retrenchment directive, all but one of them submitted the required list by the given deadline (June 30, 1975). The president who held out did so primarily on the basis that the campuses should be allowed to determine how they would meet their "deficits." The secretary of education, apparently unwilling to tolerate such dissension, delivered an ultimatum to the president who then acquiesced, with the support of the board and faculty of the college.[21]

The retrenchment lists submitted on June 30 contained a total of some 1,300 names, of which approximately half were faculty members. It is now apparent, however, that retrenchment will occur on a much smaller scope than originally anticipated. By September, the actual number of positions to be eliminated was closer to 500 (including faculty and all other categories of personnel). Most of the cutbacks were accomplished via attrition and early retirements. Only 200 personnel (including 82 faculty) are to be retrenched involuntarily. Although the actual magnitude of retrenchment has been significantly reduced, many observers feel that the events of spring and summer 1975 are symbolic of the highly centralized balance of power between the campus and the state that has evolved since the adoption of collective bargaining.

## OTHER INSTITUTIONS

The state-college and university case is not representative of state-institution relations in the other sectors of public higher education in Pennsylvania. As already noted, collective bargaining in the state-related

[21] Jack Magarell, "Showdown at Shippensburg," The Chronicle of Higher Education, July 21, 1975, p. 3.

universities and community colleges takes place at the local level between the institutional boards and their respective faculties. Nevertheless, the state government has maintained an interest in collective bargaining at these institutions because state funds are involved and because settlements in any public institution may have implications for the rest of public higher education in the state.

The secretary and deputy secretary of education, respectively, testified in unit hearings at the Pennsylvania State University and the University of Pittsburgh that the Commonwealth strongly favored single faculty bargaining units at both of these multicampus institutions. The goal of the board of education and the department of education, they said, was to develop a coordinated system of publicly supported higher education in Pennsylvania. A proliferation of single-campus faculty bargaining units would simply complicate the process of coordination and generate an excessive level of competition among the campuses for state higher education funds.

In each case the union attorney confronted the secretary and deputy secretary, respectively, with the fact that Pennsylvania's 14 community colleges bargained separately with their local boards. In each case the state's response was that unlike the university branch campuses, the community colleges were governed locally, they each had a different local mission and they were financed, in part, by local authorities. Nevertheless, both the secretary and the deputy secretary indicated that a centralized community college bargaining arrangement might make sense at some time in the future.

At this writing, the analysis of data collected on the state-related universities and community colleges is still in progress. It is therefore premature to generalize about the experience in these sectors. It is possible to illustrate this experience, however, via brief profiles of state-institution relations under collective bargaining at Temple University and the Community College of Philadelphia.

Temple University

A study of the Temple University bargaining agent election, conducted by Kenneth P. Mortimer and Naomi V. Ross, indicates that unlike the state college and university case, the Temple faculty were more concerned with internal governance issues than they were with the role of the state government. The faculty were most concerned that the university administration and board of trustees had not responded to the needs and welfare of the faculty. Relatively few faculty felt that the administration and board lacked the local authority to respond to those needs. Hence, it cannot be said of the Temple case that the faculty were primarily interested in greater influence at the state level when they adopted collective bargaining.[22]

[22] Kenneth P. Mortimer and Naomi V. Ross, Faculty Voting Behavior in the Temple University Collective Bargaining Elections, University Park, Pa.: Center for the Study of Higher Education, the Pennsylvania State University, April 1975, pp. 32 and 46.

The faculty at Temple selected the American Association of University Professors as its bargaining agent after two bitterly contested elections. The AAUP has maintained a low profile but is pleased with the three-year agreement it negotiated with the university. The AAUP points out that the parent organization in Washington, D.C., uses the Temple agreement as a model in its attempts to organize other faculties. One of the bases for AAUP satisfaction is that a role for the senate was preserved. For example, the AAUP was willing to defer in writing to existing tenure and promotion policies determined and policed by a senate committee. Thus, the AAUP has sought preservation of traditional governance mechanisms while retaining its power to protect what it perceives as the collective bargaining rights of bargaining unit members.

The first agreement negotiated by the parties was labeled a reasonable one with regard to benefits and costs by both the AAUP and the administration. No special lobbying efforts were required to implement the contract. Instead, the AAUP concentrated on supporting administration efforts to improve legislative awards to Temple University. The AAUP has also mounted its own program to advise and influence legislators. Both parties are aware that the financial condition of the university is becoming a precarious one. Temple University has considerably expanded its student body, plant and offerings and now faces increased costs at a time when enrollment may decline. An additional financial strain affecting the institution is a cumulative debt of over $20 million involving the Temple University Hospital.

Both parties plan to lobby together and separately to improve state support for the institution. They are mutually concerned about the impact of a recent faculty productivity report issued by the state department of education. The report was assembled by utilizing an annual faculty productivity questionnaire administered to all faculty. The information is required of all state-related universities by the state legislature. The AAUP has pointed out that the data assembled at the three major state-related institutions requires better screening and analysis if legislators are not to be adversely influenced by these reports. For example, the range of reports from Temple University included one faculty member who indicated a four-hour-per-week level of activity, while another faculty member wrote that he spend 147 hours on university activity! It is quite clear that the AAUP and the university administration will continue to work together in this and other matters that may affect the interests of the institution.

The Community College of Philadelphia

The Community College of Philadelphia is a large, two-year institution with over 10,000 students. Its faculty has been represented, since early 1970, by the American Federation of Teachers. In negotiating its first agreement, the faculty engaged in three separate but brief work stoppages that were then illegal. In each case they returned to negotiations. Upon implementation of Act 195 in October 1970, the union followed the procedures of the act and then engaged in a legal five-week walkout from December 1970 to January 1971. The first agreement resulted in substantial increases for what was conceded to be a low-paid faculty. Average increases of over 25 percent were awarded in the first contract year. With booming enrollment, however, the college was able to meet the financial obligations of the agreement. No special action was required by local or state funding authorities, which each provide one-third of the cost of operation of the institution.

The second contract negotiated in 1972 resulted in a stalemate and a seven-week strike after the college refused to open its doors without an agreement in September 1972. Institution-government relationships became rather complex at that point. Before the work stoppage occurred, the parties had already submitted to mediation by a state mediator. When the faculty walked out, the students went to court seeking a reopening of the college. The judge handling the case elected to assist in mediation efforts. When these efforts failed, the judge conferred with the mayor of Philadelphia who assigned his financial adviser to assist the parties in their financial analysis of the bargain. The mayor also dispatched his labor-relations adviser to serve as an additional mediator. Hence, the government's role in dispute settlement ultimately involved the participation of the state, city and judiciary in an effort to bring about an agreement. Their multilateral efforts prevailed, and the parties worked out a three-year contract.

The faculty, administration and students of this institution all engage in traditional lobbying efforts to improve the community college share of public pie. In fact, a new round of negotiations is now underway, and student leaders have been in touch with state and local officials to encourage them to provide financial support for the next contract. At all costs, the students do not want another strike. The previous two strikes resulted in an expansion of the school year that had a negative effect on their schooling, earning plans and activities. At this point, increased enrollment, a relatively low overhead and a negotiated increase in class size (following a reduction in workload from 15 hours per semester to 12) have all worked together to minimize the need for a significant increase in external financial support.

## DISCUSSION

State-institution relations under faculty collective bargaining have not been uniform across the various sectors of public higher education in Pennsylvania. Formal authority relationships under collective bargaining have been a function of the relationships that existed before unionization. Hence, the experience of the state colleges and universities under faculty bargaining reflects the relatively high degree of centralization that existed beforehand. The Temple case, in contrast, reflects greater faculty concern for campus-level relationships. While both the state and local governments were involved in the settlement of the latest faculty contract at the Community College of Philadelphia, the primary locus of activity was at the local level.

Within the broad parameters of previously existing patterns of governance however, collective bargaining has a clear potential for changing the roles, relationships and influence of the various constituencies in each sector. The state college and university case demonstrates that the locus of the collective bargaining relationship can have an important effect on the outcomes of faculty unionization. The faculty of these institutions appear to have gained greater access to the seats of power in the state capitol. The extent to which this new relationship continues to serve faculty interests depends on the colleges' ability to weather the financial pressures of the current decade and on the continued utility of a cooperative relationship for the state administration.

The department of education appears to share an interest with the faculty association in the centralization of decision making. Centralized decision making facilitates the process of statewide administration, planning and coordination. Although the department might have pursued the goals of "rationaliz-

ing" and standardizing policies and procedures in another manner, the system-wide collective bargaining relationship has proved, thus far, to be a useful mechanism for pursuing these goals.

The constituencies who have lost influence under collective bargaining are the board of state college and university directors and the college and university presidents. Neither of these groups has been intimately involved in the collective bargaining relationship, and their ability to operate outside that relationship has been seriously curtailed. For the board of directors, the remedy for this situation appears to lie with the development of greater statutory independence from the department of education.[23] For the presidents, the answer may lie with the establishment of cooperative relationships with local faculty associations. While the faculty of the state colleges and university appear to have benefited in many ways from the centralized collective bargaining arrangement, they too have an interest in avoiding a complete loss of campus autonomy. On campuses where the faculty and administration have already developed effective working relationships, it is apparent that local faculty associations are more than willing to cooperate with campus administrators in an effort to retain some decision-making responsibility at the local level.

In the same regard, it is noteworthy that the faculty and administration at Temple University have adopted a united front in promoting the interests of the institution in the state capitol. It should be noted, however, that the state-related universities have a legal and financial relationship with the state that differs substantially from that of the state colleges and university. The relative statutory autonomy of the state-related universities enables these institutions to actively promote their interests via direct communication with the legislature. While the state college presidents have courted the legislature from time to time, their activity in this area is restricted by their administrative relationship with the state administration. Indeed, the state college and university faculty association (APSCUF) probably has more independent influence in the state capitol than the state college presidents.

The apparent flexibility of the Community College of Philadelphia to bargain with its faculty without substantial intervention by external authorities relates, no doubt, to their ability to operate within the limits of their financial resources. If the financial scenario at this institution changes, it is likely that they too will experience greater external constraints. The locus of their fiscal and administrative relationship with external authorities, however, is primarily at the local level. Under the current collective bargaining arrangement it is therefore likely that the state government will continue to play a marginal role.

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[23] There has been some pressure in the state colleges and university to move toward administrative separation from the department of education. A bill has been introduced in the legislature to establish a "Commonwealth University" that would serve as a new central administrative structure for the state-owned colleges. The new organization would be headed by a chancellor who would assume the present administrative and budgetary responsibilities of the secretary of education and report to a 17-member board of regents (which would actually replace the present board).

It is difficult to offer any definitive statements about the consequences of faculty bargaining for state-institution relations in Pennsylvania. The collective bargaining process is still in the developmental stage, and there are many other important forces influencing the changing nature of governance relationships in the various sectors of public higher education.

The experience with faculty bargaining thus far, however, leads to three tentative observations. First, the structure and locus of collective bargaining has conformed in large part to previously existing authority relationships in each sector. The prebargaining structural and legal relationships between the campuses and the state remain intact.

Second, within the broad parameters of previously existing state-institution relationships it is apparent that those constituencies who are direct parties to the collective bargaining relationship gain power and influence relative to those constituencies who are not directly involved. Hence, the state college and university presidents and the board of directors have suffered a loss of influence as the locus of decision making has moved steadily into the collective bargaining arena.

Finally, collective bargaining has enhanced the legal and political status of college and university faculty as independent participants in the governance of higher education. One of the consequences of their new status is that faculty are no longer compelled to rely primarily on institutional administrators for leadership and organization in the pursuit of their interests at the state level. They may choose to deal directly with the state, as in the case of the state colleges and university. Or they may choose to align themselves, as coequal partners, with the institutional administration in the promotion of institutional interests, as with Temple University and the Community College of Philadelphia. The ability of faculty associations to promote faculty and institutional interests in the state capitol is likely to be curtailed, however, by the relatively small size of their constituencies, the financial pressures of the current decade and the changing status of higher education as a funding priority at the state level.

# PART II

## SOME NEWER EXPERIENCES:

## HAWAII, MASSACHUSETTS, ALASKA AND MONTANA

# FACULTY BARGAINING AT THE UNIVERSITY OF HAWAII

by

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## Introduction

The Hawaii public employees bargaining law, Act 171, was passed in 1970.[1] It defined the faculty of the University of Hawaii and the Community College System as an appropriate bargaining unit and set the stage for a complex set of events ranging from July 1971 through March 1975 when a contract was finally ratified.

This paper reviews the background and events relative to faculty bargaining at the university and attempts to analyze relations between the institution and state government during this time. The analysis relies on Dr. Lau's experience as former secretary of the university and as the university's chief spokesperson during the bargaining process and Dr. Mortimer's interviews with participants in December 1972 and July-August 1974. Documents such as the contract, HPERB rulings, legal briefs and secondary source material were also part of the data base that supports this paper.

The paper begins with a description of the university and a brief analysis of Act 171, the collective bargaining statute. Then it provides a chronology of events relative to collective bargaining from the time the petition was filed in July 1971, through the contract ratification in March 1975. A description of the organization and structure is followed by a section on system-wide-campus authority relations. A discussion section attempts to point out some of the ambiguities in state-institutional relations under collective bargaining in Hawaii.

## The University of Hawaii

Public higher education in the state of Hawaii is under the control of the University of Hawaii. The university was founded in 1907 as a federal land-grant institution specializing in agriculture and the mechanic arts. In 1964, the state legislature authorized the university to found and operate a

[1] Act 171, Session Laws of Hawaii 1970, codified as Chapter 89, Hawaii Revised Statutes.

statewide community college system and transferred all of the technical schools from the department of education to the university. The community colleges offer a variety of college transfer and general education curricula on all campuses, as well as selected vocational and technical curricula, and award associate degrees.

The university is a nine-campus institution with approximately 40,000 students. The main campus is in Honolulu and has approximately 22,000 students. This campus, normally referred to as the Manoa Campus, offers educational programs at the undergraduate and graduate levels. It is organized into seven colleges and a host of research centers and service institutions. Within the university system, there is a four-year college at Hilo, on the island of Hawaii and seven community colleges, one each on Maui, Kauai and Hawaii and four on the island of Oahu. There are approximately 2,500 employees on these nine campuses that are classified as faculty members. In January 1976, a new four-year college was being established on Oahu called West Oahu College.

General responsibility for governing the University of Hawaii is vested in the board of regents, which is appointed by the governor with the advice and consent of the senate in accordance with Article IX of the Hawaii State Constitution that establishes the state university and constitutes it as a body corporate. Chapter 14A of the Hawaii Revised Statutes defines the University of Hawaii as an executive and/or administrative department of state government, but Chapter 304 and subsequent attorney general's opinions indicate it has certain autonomy not accorded other state agencies. For practical purposes, the university may be regarded as a public corporation that operates as a quasi-state agency within the meaning of Hawaii's statutes. Glenny and Dalglish refer to this as statutory rather than constitutional autonomy.[2] Although the state government is extensively involved in the University of Hawaii, it is difficult to be precise about the exact extent of that involvement. For example, legislatively enacted fringe benefits are generally applicable to all university employees, but the faculty and the administrative, professional and technical personnel are specifically excluded from the civil service classification system administered by the state.

## The Hawaii Public Employee Collective Bargaining Law

Section 2, Article XII, of the 1950 state constitution gave public employees in Hawaii the right to organize and make their grievances and proposals to the state known. This stopped short of granting full collective bargaining rights to public employees, a situation that was corrected by the 1968 constitutional convention. The amended section of the 1968 constitution gave persons in public employment the right to organize for the purposes of collective bargaining.

The phrase "as prescribed by law" contained in the 1968 constitutional amendment was interpreted as a mandate to the legislature to pass a collective bargaining bill. The 1970 Hawaii legislature passed Act 171, which guarantees public employees collective bargaining rights. Some of the major features of this act are discussed below.

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[2] Lyman A. Glenny and Thomas K. Dalglish, Public Universities, State Agencies and the Law: Constitutional Autonomy in Decline, (Berkeley: Center for Research and Development in Higher Education, 1973), p. 46.

The Hawaii act may be classified as an "omnibus" collective bargaining statute. Like most such statutes, it recognizes the right of public employees to organize for the purposes of collective bargaining, requires a public employer to negotiate in good faith with respect to wages, hours and other terms and conditions of employment and creates a public employment relations board to administer the provisions of the act. The Hawaii act has some features which do not appear in many statutes, however, and other features that "set the tone" for employer-employee relations.

The act declares that it is the public policy of the state to promote joint decision making and more effective and responsive government through collective bargaining. It further establishes that the public policy of the state is to promote harmonious and cooperative relations between government and its employees while maintaining principles of the merit system and equal pay for equal work.

Section 89-2 of the act specifically defines the board of regents of the University of Hawaii as the public employer. Section 89-6 defines 13 bargaining units. Unit 7 consists of the faculty of the University of Hawaii and the community college system, and Unit 8 consists of personnel of the University of Hawaii and the community college system other than faculty.

The act is rather specific concerning the identification of the "employer" for the purpose of negotiations and in effect prescribes the composition of the employers' bargaining team. Section 89-6 (b) designates ". . . the governor or his designated representatives of not less than three together with not more than two members of the board of regents of the University of Hawaii in the case of unit (7) and (8) . . ." as the employer for the purpose of negotiations. As was the case for public employee bargaining with the other 12 units, the governor appointed the chief negotiator and representatives of the state's personnel services department and the department of budget and finance to management's bargaining team. Together with two members of the board of regents, the three designated representatives of the governor constituted the official management bargaining team. Staff support was provided by university personnel, headed by the secretary of the university, who also represented the president. Others were the associate director of the university's personnel office, the assistant vice chancellor for faculty affairs of the Manoa Campus, an associate dean from the college of arts and sciences on the Manoa Campus and the director of manpower and organization of the university. Later, a staff member from the community colleges was added to the staff group.

The collective bargaining law grants public employees the right to form and join unions and requires the parties to negotiate in good faith on wages, hours and other terms and conditions of employment. Any employee has the right to refrain from any of these activities except that every member of the bargaining unit must pay a service fee to the elected representative. (At the University of Hawaii, this service fee has been approximately $8 per month.)

The act preserves certain rights for management and prohibits agreements on them. Section 89-9 of the act, which borrowed heavily from Federal Executive Order No. 10,988, deserves to be quoted at length.[3]

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[3] Chapter 89, Hawaii Revised Statutes, Section 9(d).

> . . . The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work . . . or which would interfere with the rights of the public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge or take other disciplinary action against employees for a proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means and personnel by which the employer's operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies.

The important point is that this clause appears to prohibit agreements on these topics. Statutes in other states, e.g., Pennsylvania, do not require management to make agreements on inherent managerial policies but do not prohibit the making of such agreements.

The act also prohibits both employers and employees from interfering or restraining employees in the exercise of any rights under the statute. Section 89-11 (a) encourages the parties to develop grievance procedures, including binding arbitration. Section 89-11 (b) provides for the establishment of dispute settlement mechanisms including mediation, fact finding and voluntary arbitration. It is lawful for public employees to strike after the exhaustion of mediation and fact-finding procedures. The total mechanism set up in the act would provide approximately a 90-day period after reaching impasse during which the parties cannot legally strike or engage in a lock out.

Section 89-10 (b) provides that all cost items in a collective bargaining agreement shall be subject to appropriations by the appropriate legislative body. The state legislature or the legislative body of any county, with respect to those bargaining units which include county employees, may approve or reject cost items submitted to them, as a whole. To date all negotiated salary increases have been approved. If rejected, all cost items submitted shall be returned to the parties for further bargaining.

In cases where there may be a conflict between the employer's existing rules and regulations and the agreement, the act provides that the collective bargaining agreement shall prevail except where it might be inconsistent with the management rights clause. Section 89-19 further provides the act shall take precedence over all conflicting statutes and shall preempt all contrary local ordinances, executive orders, legislation, rules or regulations adopted by the state or any one of its agencies.

The Hawaii Public Employee Relations Board (HPERB) has three members appointed by the governor as follows: one management representative, one labor representative and one public representative who serves as the chairman. The board has authority to designate appropriate bargaining units, conduct elections and establish dispute resolution mechanisms over such matters as cost items, grievances and unfair labor practices. It also establishes arbitration, fact finding and mediation panels and may conduct studies on public employer-employee problems.

Finally, the act requires that the union make a detailed financial statement available to the employees who are members of the organization. In practice, the financial considerations of the employee organizations have been monitored by HPERB through the fee-setting mechanism. HPERB has held hearings on the appropriate size of fee, how much of it must be retained for local matters and how much can be sent to national affiliates. In early 1975, for example, the board prohibited the AAUP-NEA alliance from sending any portion of its fee to either national organization. At the same time, it refused to continue the $102 yearly fee it had granted to the first certified agent and reduced it to $77. At a subsequent hearing, after the new organization presented additional evidence, HPERB authorized a service fee of $102 a year.

## Chronology of Events

The events relative to faculty collective bargaining at the University of Hawaii are rather complex and date back to 1971. These events have been chronicled elsewhere and we offer only a summary here.[4]

The collective bargaining chronology at the University of Hawaii can be divided into five separate periods of time, ranging from July 1971 through March 1975. The first period covers from July 1971 through July 1972 and involves the unit determination case. The second period is the fall of 1972 and involves the first election campaigns and the certification of an agent. The third period covers from December 1972 through November 1973 and culminates in the rejection of the first collective bargaining agreement. The fourth period is from December 1973 through October 1974 and involves the decertification of an agent and the selection of a new one. The period from November 1974 through March 1975 was devoted to the negotiation of a collective bargaining agreement that culminated with a ratified contract.

## July 1971 Through July 1972: The Unit Determination Case

In July of 1971, the Hawaii Federation of College Teachers (HFCT) an affiliate of the American Federation of Teachers, filed a petition for an election to determine a collective bargaining representative. (Prior to this, the Hawaii Government Employees' Association [HGEA] had filed a pro-forma petition on Jan. 2, 1971, the earliest possible filing date under the law.) Three other groups intervened on the HFCT petition: a faculty senate, American Association of University Professors (AAUP) Alliance, an affiliate of the National Education Association, the College and University Professional Association (CUPA) and the Hawaii Government Employee's Association (HGEA).

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[4] Everett C. Ladd Jr. and Seymour Martin Lipset, Professors, Unions and American Higher Education, (Berkeley: Carnegie Commission on Higher Education, 1973), pp. 49-53.

Edwin C. Pendleton and Joyce Najita, Unionization of Hawaii Faculty: A Study in Frustration, (Honolulu: Industrial Relations Center, 1974).

Joel Seidman et al., "Faculty Bargaining Comes to Hawaii," Industrial Relations, 13, No. 1, 1974, pp. 5-22.

Although the University of Hawaii faculty are designated as Unit 7 in Hawaii's public employee bargaining law, there was disagreement among the associations and between the associations and the University administration over the exact composition of the unit. The disagreement centered around two points: the status of graduate assistants and who would be defined as administrators and therefore excluded from the bargaining unit. The HFCT petitioned for the inclusion of graduate assistants and the exclusion of associate and assistant deans. All of the unions supported the inclusion of department chairpersons in the unit, but CUPA wanted assistant and associate deans in the unit as well. The administration wanted assistant and associate deans, division and department chairpersons and graduate assistants excluded from the unit. All parties agreed that part-time lecturers teaching less than the equivalent of half time should be excluded.

After HPERB had indicated that the HFCT had submitted the requisite evidence that at least 30 percent of the eligible faculty favored an election, the university administration and the four unions held a series of meetings to determine the composition of the bargaining unit. After prolonged discussion on various positions and functions, the parties agreed that certain positions met the statutory exclusion of several classes of management personnel. Among others, excluded were such administrators as the president of the university, vice presidents, chancellors, deans and provosts.

The parties were unable to agree on three categories: graduate assistants, department chairpersons and assistant and associate deans. A formal hearing was conducted by HPERB, and the resulting decision included department chairpersons in the bargaining unit but excluded graduate assistants (as being students rather than faculty) and assistant and associate deans.

Fall 1972: The Election

The first election was held on Oct. 9, 1972, and the faculty had a choice of no representative or any of the four unions. The alliance and the HFCT were the two top finishers, but neither received a majority of the first ballot. A run-off election was held in November 1972 between the alliance and the HFCT, with the latter receiving a 55-percent majority.

Surveys have shown that the multicampus nature of the bargaining unit was an important factor in the HFCT's victory. The HFCT's major source of support came from the faculty of the two-year campuses. The alliance achieved a majority of the votes cast on the Manoa Campus on the second ballot, whereas 85 percent of those voting from the two-year campuses favored the HFCT.[5] These and other data make it clear that had the unit been defined by campuses, the winning agent might have been the alliance at the Manoa Campus and the run-off would have been between CUPA and HFCT at Hilo and the community colleges.

In the run-off election, CUPA supported the HFCT, but was rebuffed by the HFCT after the latter was elected. This explains, at least in part, the antagonism against the HFCT and the contract it negotiated, as well as the subsequent coalition between CUPA and the AAUP.

[5] Ladd and Lipset, Professors, p. 51.

December 1972 Through November 1973: Rejection of a Contract

After some 40-50 negotiating sessions, a contract was submitted to the faculty constituency by the HFCT for ratification in November 1973. The contract failed ratification by a margin of 279 to 1,301, almost 5 to 1.

While the failure to ratify the agreement was due to a variety of factors, Pendleton and Najita report that certain aspects were more controversial than others.[6] First, the scope of the contract was quite narrow. The contract contained a strong management rights clause, based upon 89-9 (d) of the statute. Pendleton and Najita report that this section of the agreement was much stronger than the language of contracts covering public school teachers and nonfaculty personnel at the university. The limited scope of the agreement is also reflected in the narrow definition of a grievance and extensive restrictions on the authority of an arbitrator to go beyond procedural matters or to fashion a remedy for contract violations. These limitations on contract scope, together with the absence of a prior rights and benefits clause, led to the charge that the faculty negotiating team had "sold out" basic faculty prerogatives to management.

A second major factor in the failure to achieve ratification was the introduction of a new type of nontenure employment that entailed five-year appointments. Other language in the contract codified the university policy making tenure appointments to a school or college or other administrative unit, rather than to the university as a whole, and provided that personnel committees be appointed by chairpersons or unit heads rather than elected by the faculty. These types of clauses led to public charges by AAUP and NEA officials that employment security and/or tenure could be completely eliminated from the university system if the contract were ratified.

Finally, the agreement called for modest salary increases, percentage wise, when compared to other contracts for Hawaii's public employees. The wage package varied from 12.4 percent (professor, step 1) to 22.4 percent (instructor, step 1) over a two-year period. Since there had been no general salary increases at the university since 1970, though most faculty received the annual increment of four percent each year, the negotiated increases were not regarded as sufficient to overcome some of the disadvantages of the contract.

Unfortunately for the HFCT, it was never given a chance to explain some of these "negative" provisions. At the meeting scheduled to explain the agreement to the Manoa faculty, a shouting match developed between the HFCT negotiators and members of the audience. For instance, the HFCT could not explain that the management rights clause was based essentially upon the state statute, which was patterned after the federal executive order; that the new five-year appointments were designed to give renewal appointments to some instructor-level faculty in some of the larger departments who would have been denied tenure because they did not possess the academic qualifications such as the doctorate and recognized research capabilities; and that existing university policy already provided for tenure to be in a school or college, rather than university wide.

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[6]Pendleton and Najita, Unionization, pp. 23-32.

A faculty member of the HFCT bargaining team has described that meeting in rather colorful language:[7]

> ". . . A major piece of theatricality in collective bargaining occurred at the University of Hawaii (UH) on Wednesday, Nov. 14, 1973. After 10 months of negotiations, the collective bargaining contract was being proposed to the faculty; 300 professors out of 1,600 on the main campus were assembled, appropriately, in the Kennedy Theatre.
>
> " . . . the meeting erupted. The contract had saved tenure, sabbaticals, and secured an average 16-percent pay raise over three years. Since 1970, the faculty had received no pay raises, bills were still alive in the legislature calling for a "review" of tenure, positions had been frozen and a severe reduction in state revenues was announced by the acting governor. But the assembled 300 were full of righteous anger stimulated by the American Association of University Professors (AAUP). They wanted more money, more tenure, more power, more AAUP principles in their contract. Better, they said, to die herotically than live prudently (but striking was unprofessional). One professor, Guru X, the Dr. Moriarty of university unionism, standing in front of the auditorium, his Roman nose and mane of distinguished gray hair offsetting the stentorian boom of his doomsday voice, claimed shame at belonging to an organization that had negotiated such a bad contract. Another, Mahdi Y, an expert in consumer pricing who had come out of the eastern establishment union bureaucracy a few years earlier, claimed that he had 'bargained better contracts with the military government of Brazil.' Within a week the contract was defeated 279 yes to 1,301 no, with 122 declared void, a total of 1,702 ballots cast out of a potential 2,400 voters."

December 1973 Through October 1974: The Decertification

After the rejection of the contract, the university questioned whether the HFCT continued to represent the majority of the faculty. In December 1973, an alliance between the AAUP and CUPA was established solely for collective bargaining purposes. The newly formed organization, the University of Hawaii Professional Assembly (UHPA), began to gather signature cards so that it could petition for a decertification and/or new election. In January 1974, UHPA filed for a new election and the university asked HPERB for a declaratory ruling on whether it must bargain with the HFCT or await the results of a new election. On Feb. 12, 1974, the board ruled that it would be a prohibited

[7] George Simson, "Solidarity Never! The Professoriate and Unionization at the University of Hawaii," Journal of Collective Negotiations in the Public Sector, Vol. 3, 1975, pp. 267-268.

practice for the university to bargain with HFCT pending the board-ordered election. The election took place on March 13-14, 1974, between no representative, UHPA and the HFCT. Since neither association gained a majority on the first ballot, a run-off election was scheduled for April 1974.

The election was postponed by an HFCT prohibited practice charge against UHPA and the university. HFCT claimed that, inter alia, the university had interfered with the rights of its employees to choose a bargaining agent by showing that it preferred UHPA over the HFCT and promising a "better deal" with UHPA if the faculty should reject HFCT. Although eventually dismissed by HPERB, the charges were successful in delaying the run-off election until the fall of 1974. At that time, UHPA received 1,138 votes and the HFCT 721, and the former was declared the exclusive representative of the faculty.

November 1974 Through March 1975: The Negotiation of the Contract

After some 40 negotiating sessions, dating from December 1974 through March 1975, a contract was ratified by the faculty constituency of UHPA, 1,499 to 70.

Intensive negotiations were held in January, February and early March 1975, which culminated in an agreement signed on March 18, 1975, in time for action by the legislature on the salary package. The salary package called for increases over three stages (Nov. 1, 1974, March 1, 1975, and July 1, 1975). The first two stages were to provide for a catch-up, and the third establishes salary schedules for the 1975-76 fiscal year, which will prevail until changed. In general order of magnitude, these three stages resulted in an overall increase of approximately 28 percent for an instructor at the lower end of the salary scale, to about 18 percent for a full professor at the upper end of the scale. The higher-ranked personnel received more in absolute dollars, although their percentage increase was less than the lower ranks.

The University of Hawaii manages extramural grants averaging in excess of $20 million a year, and employs several hundred persons on various research, training and other projects. The collective bargaining agreement codified the practice of having the salary increases for personnel so funded payable from the grants themselves, to the extent funds were available and permissible to be used for these purposes. This provision made it clear that these particular cost items would not be subject to appropriation by the state legislature.

With respect to the state-funded salaries, the governor submitted a recommendation to the legislature, which appropriated the necessary funds before it adjourned its session in the spring of 1975.

On other matters, the new agreement in large measure incorporated and refined on-going policies of the university, although a number of adjustments were made in certain committee procedures, in which new committees established by the agreement replaced committees formerly established by faculty senates. A few of these adjustments are mentioned.

Article IV, Tenure and Service, consists of a combining, refining and clarifying of the three tenure policies then in force (one for the principal campus at Manoa in Honolulu, one for Hilo College on the island of Hawaii and one for the community college system).

For new faculty to be employed after July 1, 1975, the probationary period for associate professors was extended from two to three years, and the probationary period for assistant professors and instructors, including all faculty in the community colleges, was extended from four to five years. Ambiguities dealing with prior service, broken service, transfers from one campus to another and the locus of tenure were clarified.

One innovation in the tenure and promotion evaluation process provides for giving opportunity to a faculty member to review his application dossier and submit written comments and additional material before the campus head (i.e., provost for a community college, dean of Hilo College or the chancellor of the Manoa Campus) makes his recommendation, if there has been a negative recommendation up to that point.

Another innovative procedure involves the establishment of a faculty advisory panel which consists of a universitywide group elected by the faculty "to provide a resource of experienced faculty to which the president of the university may look for assistance and advice with respect to personnel matters involving complaints from or about faculty members." (Article X.)

The contract calls for the appointment of personnel from this panel in the establishment of advisory committees on academic freedom (Article VIII) and advisory committees on disciplinary actions (Article IX).

A formal grievance procedure ending in final and binding arbitration was incorporated in the agreement with certain limitations upon the authority of the arbitrator.

## The Organization and Structure for Bargaining in the State of Hawaii

In order to understand the politics of education in the state of Hawaii, one must be aware that the public schools, as well as the University of Hawaii, are funded directly out of state rather than local revenues. The state government then, is accustomed to playing a significant role in educational matters. Additionally, the state had significant experience with collective bargaining when it came to the table with faculty. By 1973, 12 of the 13 units designated in the law had valid contracts. Only the faculty contract remained to be negotiated.

The university experience with collective bargaining was part and parcel of this larger series of developments relative to other public employee unions. For example, public school teachers had signed a contract in February 1972, after a year and a half of turbulence concerning the appropriate bargaining agent and a suitable contract. In April 1973, the public school teachers union took the teachers out on strike against the board of education and the state department of education. Case law was being made by the decision involved in these negotiations and this particular strike that would have general applicability to the university.

University management prepared for collective bargaining by assigning the responsibility for it to the secretary of the university, one of the authors of this paper. In the period preceding the passage of the act, this individual attended a number of workshops on collective bargaining in public employment and invited a number of knowledgeable and/or technical experts to visit the university as consultants.

In the summer of 1971, the president of the university appointed three task forces that were designed to be representative of all levels of administration throughout various segments of the university. The task force on academic affairs was chaired by the vice president for academic affairs. It had 10 to 12 members, and they were charged to prepare data for collective bargaining purposes. The second task force, on economic matters, was chaired by the vice president for business affairs. This group performed studies on salary and fringe benefit possibilities. The third group, the technical task force chaired by the secretary, concentrated on the developing law of public employee bargaining and other legal and strategic matters. Finally, a collective bargaining coordinating council, chaired by the president, was appointed that included all vice presidents, chancellors and the secretaries of the university and of the board of regents. Several informal meetings between the president and the board of regents and representatives of the governor were held in order to discuss problems of mutual concern.

The state's representatives left the detailed preparation of management's bargaining position on noneconomic items to the university staff. It was indicated, however, that any agreement made at the University of Hawaii would have to take into account agreements made with the other 12 units specified in the law. For example, the state refused to negotiate any fringe benefits of a general nature on a unit-by-unit basis. In its negotiation with the other 12 bargaining units, the state had argued that such benefits were only to be negotiated on an across-the-board basis for all public employees. Additionally, retirement benefits were excluded by law from negotiations.

Further, the negotiations that took place during the first contract were conducted in an atmosphere of rising legislative concern about the University of Hawaii and its faculty.[8] February 1973 saw the legislative auditor's report point the finger at questionable and inefficient practices at the university. Certain members of the state senate were openly critical of the faculty and the tenure system and even succeeded in getting a bill passed in the senate that would have required the periodic review of tenured faculty in the university. Although the tenure bill was eventually recommitted to committee, at the behest of the university administration, the issue seemed to have created considerable concern among the faculty and tenure became a very sensitive issue.

Furthermore in July 1973, because of budget limitations the university notified 168 nontenured faculty that their contracts would not be renewed beyond the upcoming academic year. Although these termination notices were eventually rescinded and staff reduction was achieved through normal attrition and selective nonrenewals, the whole matter raised the faculty's sensitivities toward such union-oriented issues as job security.

## The Nature of Systemwide Campus Authority Relations

Since the contract has been in operation only a short while it is difficult to make judgments about the extent to which centralization follows unionization at the University of Hawaii, although indications point in that

[8] Pendleton and Najita, Unionization, pp. 19-20.

direction. The contract that was rejected has an article entitled "consultation." It agreed that the employer would consult with the exclusive representative prior to effecting changes in major policies affecting personnel and labor relations and this consultation was to be accomplished by the board, a committee of the board, the regents, the president or an officer of the central administration. According to that contract, there would have been opportunity for the chancellors at Manoa and Hilo and the provost of each of the community colleges to meet with designated union officials twice each semester. Discussions were to be informal and for the purpose of clarifying issues rather than for arriving at decisions.

The purpose of this earlier provision on "consultation" was to achieve agreement with respect to Section 89-9(c) of the collective bargaining law that mandates that all matters affecting employee relations are subject to consultation and also requires the employer to make every reasonable effort to consult prior to effecting changes in any major policy.

There had been considerable confusion and some disagreement between the HFCT and the university as to which matters were subject to consultation with the union. The consultation provision in the contract in effect defined a major policy as a matter requiring the attention of the board of regents or the president of the university, while at the same time created machinery for the chancellors and provosts to meet with the union (as distinguished from the faculty) on other matters affecting employee relations. During this early period, there was still uncertainty as to what matters could be handled through faculty senates and other faculty committees and what matters required discussion with the union qua union.

To the extent that the collective bargaining statute required consultation prior to effecting changes in major policies and to the extent that making and changing major policies were the ultimate province of the board of regents, collective bargaining further centralized the administration of the university.

The second agreement fixed the locus of tenure as being one of the campuses of the university system. At the Manoa Campus, tenure was further limited to a given college, school or organized research or service unit. This provision, similar to the comparable provision in the first agreement, continued the existing policy of the university.

Similarly, the contract calls for different procedures for tenure and promotion at Manoa, Hilo College and the community colleges. This also continued, in general form, the existing procedures that developed at different times in response to local conditions in a complex multicampus system. The contract, however, consolidated three separate tenure policies into one article on "tenure and service."

There is also considerable evidence that the variability at the local campus level was a significant impediment to developing a set of demands on the part of the HFCT in the first round of negotiations. This was a continual source of debate within the union circles.

The ratified contract has provision for a joint study committee to consist of eight people, four appointed by the assembly and four by the university, to identify problem areas and explore possible solutions as to the appropriate subjects for collective bargaining.

The joint study committee was established because both parties felt that, in the interest of concluding an agreement in time for legislative action on the salary package, many matters were better left for more leisurely exploration. It was made clear, however, that this was to be a study committee and not a continuation of the negotiating process.

Discussion

It is difficult to be precise about the exact nature of state-institutional authority relations under collective bargaining in Hawaii. Two changes may be mentioned, however. The centralization of faculty personnel policies represented by collective bargaining, with formal state participation in determining the specific provisions, represented a significant change from the status quo ante at the University of Hawaii. Also, salary schedules had been set formally by the board of regents, upon recommendation of the central administration in conjunction with faculty committees; consultation with state officials was done on an informal basis prior to collective bargaining.

The major changes associated with bargaining at the university appear to be related to the special nature of the statute, legislative attitudes toward the faculty and the traditional proximity of the university to state government. The statute requires that the governor or his designated representatives have at least three positions on the official negotiating committee and that the committee includes no more than two members of the board of regents. This tends to emphasize the leveling effects of collective bargaining by making it clear that faculty economic and personnel policies will be looked at along with those for other public employees in the state.

There appears to be strong legislative expectations that once a collective bargaining law is passed, the faculty will take advantage of it if they wish economic gains. In fact, relations between the legislature and the faculty have not been cordial in recent years, and the faculty may have been concerned about developing a counterforce to legislative encroachment into faculty affairs. The state senate did consider a bill to review tenure, for example, and in the summer of 1973, the HFCT was unsuccessful in its attempts to get an interim pay raise bill through the legislature. Again in April 1974, the legislature adjourned without granting a general salary increase to the faculty because the proposed increases had not been negotiated.

There is evidence from the surveys on the Hawaii election that the faculty did not consider "no representative" as an effective alternative to unionization. A large part of that attitude may have been due to faculty perceptions of a hostile legislature and/or state government.

Another factor of some importance is the fact that the university's management took a strict view of the scope of bargaining under Act 171. The university wanted to proceed cautiously before letting collective bargaining become a substitute for traditional governance mechanisms at the university.

It proceeded on the theory advocated by some writers that faculty collective bargaining should encompass economic matters, but that governance matters are better handled through the more traditional procedures. This approach has been referred to by some as recognizing the "dual role" of

faculty, with one role as employees under collective bargaining, which emphasizes employee-employer relationships, and one role as a professional colleague, which emphasizes collegiality under traditional governance procedures.

Article XIX of the current contract creates a joint study committee to explore possible solutions with respect to the subjects that may be appropriate for collective bargaining. The scope of negotiation question is not yet definitively determined and it will be the subject of much debate between the parties in other negotiations.

In summary, one may surmise that the most important change in relationships deals with the definition of "employer" for the purpose of negotiations. Prior to collective bargaining, the board of regents had a relatively free hand in establishing policy for the university, after the usual procedures involving reports and recommendations of faculty senates and administrative review and recommendation. The board of regents was the only state body that had the authority to establish salary schedules for its appointees. In all other cases, whether it be public school teachers or civil service employees, which include blue collar, white collar and professional employees, salary schedules, prior to collective bargaining, were set by the state legislature. For the university, however, even during years when a general salary increase was legislated, the legislature would appropriate funds, with some general guidelines, and leave the final decision on the salary schedule to the board of regents.

The collective bargaining law has increased the authority of the state executive branch in all matters subject to negotiation.

# STATE-INSTITUTIONAL RELATIONS UNDER FACULTY COLLECTIVE BARGAINING IN MASSACHUSETTS

by

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## Introduction

Collective bargaining in Massachusetts represents a clear case of the impact of changes in a statute on state-institutional relations. The early contracts in postsecondary education in the Commonwealth were negotiated under a statute that excluded financial matters as bargainable items. A 1974 statute removes this ban and has resulted in significant changes. This paper will discuss these and other developments as they relate to state-institutional authority relations and campus autonomy under collective bargaining in the Commonwealth of Massachusetts. It begins with a brief discussion of public higher education and then describes the 1967 and 1974 collective bargaining statutes. Faculty bargaining activity is then summarized and a discussion of three cases provided. A final section discusses the impact of these developments on state-institutional authority relations.

The comments offered are based on documentary analysis, interviews with faculty union leaders and administrators and visits to three campuses in the spring of 1975. The campus visits were conducted in cooperation with Dr. Richard C. Richardson Jr.

## Public Higher Education in Massachusetts

Until the early 1960s, higher education in the Commonwealth of Massachusetts was dominated by the existence of a strong private sector. Historically, Massachusetts has had one of the nation's lowest per-capita expenditures on public higher education. (Massachusetts ranked 49th out of 50 states on this economic indicator in the late 1960s and early 1970s.)[1]

In 1965, the Massachusetts Legislature passed the Willis-Harrington Act and reorganized the department of education. A major part of this legislation established the board of higher education to oversee public higher education in the Commonwealth. The act also removed the state colleges from under the state board of education and created a board of trustees for the Massachusetts State College System. This latter action was consistent with the separate governing boards for four other sectors of public higher education.

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[1] Fred F. Harcleroad and Robert J. Armstrong, New Dimensions of Continuing Studies Programs in the Massachusetts State College System (Iowa City: American College Testing Program, 1972) p. 10.

The board of higher education was charged to "promote the best interests of all public higher education throughout the Commonwealth." It has the authority to review, recommend and plan but has no regulatory power of its own. It is largely an advisory mechanism, except that it is the administering agency for a scholarship program.

The authority for making institutional policy relative to collective bargaining in Massachusetts rests with five separate boards of trustees. The governing board of the University of Massachusetts has control over a three-campus system. The campuses are at Amherst, Worcester and Boston. The Massachusetts State College Board governs a 10-campus system including eight former state teachers colleges and two special purpose institutions, Massachusetts Maritime Academy and Massachusetts College of Art. The Massachusetts Board of Regional Community Colleges governs a 15-campus system spread throughout the state. The community colleges, contrary to the practice in many other states, receive little financial support from local communities. They are largely funded directly from state appropriations. Southeastern Massachusetts University is located between New Bedford and Fall River and has its own board of trustees. In 1975, Lowell Institute merged with Lowell State College and became Lowell University. The new institution has its own board of trustees.

## The Statutes

Collective bargaining in Massachusetts has been conducted under two different statutes. In 1967, the general laws were amended to provide collective bargaining rights for employees of the Commonwealth. These amendments established the right of employees to organize and join employee organizations, established the principle of exclusivity in bargaining, required the employer to meet at reasonable times and confer in good faith with respect to conditions of employment and to execute a written contract. The major deviation, when compared to statutes in other states, was in the definition of bargaining scope. There was no language requiring bargaining on economic items and the statute was actually interpreted as prohibiting agreements on financial items at the state level.

This fact was not well known in the early stages of collective bargaining activity. The act went into effect in 1968 but as late as December 1971 college faculties were only marginally aware of this rather serious limitation on bargainability. In the state colleges some of the faculty and its representatives did not find this out until they got to the bargaining table. Since school teachers, who bargained under local and/or municipal statutes, had been negotiating about wages for some time it may have been "natural" for faculty leaders to assume the bargainability of financial items in colleges and universities. Employers, however, were successful in getting an interpretation that the phase "conditions of employment" excluded financial items.

As a result of this limitation on the scope of negotiations, bargaining on salaries was directed toward the distribution of whatever monies became available rather than the entire size of the economic pie. Some of the early contracts, notably those at Southeastern Massachusetts University, Worcester State College and Boston State College, went into extensive detail on evaluation procedures whereby any "merit" monies would be distributed. (The term "merit" has special meaning in Massachusetts, which is explained later in this paper.)

The administration of the 1967 act suffered because the labor commission was not adequately staffed and funded. One labor leader reported that since the commission did not have the authority to appoint hearing examiners, it developed a 12- to 18-month time lag for hearing cases. To avoid these delays, most bargaining units were determined by stipulations between management and the union. It also became the practice for the unions to make informal agreements among themselves as to which institutions they would attempt to organize. As a result, there were few contested elections between the NEA, the AFT and the AAUP in Massachusetts up to the summer of 1974. In addition, the administrations at Salem, North Adams and Westfield State Colleges consented to negotiate with an NEA affiliate and did not ask for elections.

In July 1974 a new collective bargaining bill went into effect that removed some of the restrictions on bargainability and placed Massachusetts in the mainstream of states with comprehensive collective bargaining statutes. The pertinent features of Chapter 1078 are discussed below.

In the case of colleges and universities, the public employer is specified as the respective boards of trustees. The labor commission has the responsibility to establish procedures for the conduct of unit determinations, hold unit hearings, determine prohibited practices, determine the existence of an impasse and to appoint mediators and/or fact finders where appropriate. Strikes are prohibited by the act, and the commission has the power to initiate court proceedings to forestall a strike if one is about to occur or to terminate one if it has occurred.

Section seven of the statute provides a broad definition of negotiable items as follows: "wages, hours, standards of productivity and performance and any other terms and conditions of employment." Any cost items contained in the contract are to be submitted to the legislature as an appropriations request within 30 days after the agreement is executed. If the legislature rejects the request for appropriations, the cost items are to be returned to the parties for further bargaining. In the event there is conflict between the agreement and certain statutes, the provisions of the agreement are to prevail.

It is obvious that section seven's provisions will need substantial practical and judicial interpretation before the actual impact of the statute is known. There exists few definitions of standards of productivity in colleges and universities, and the eventual impact of this clause on negotiable items will be worthy of note. Similarly, since there exists no definition of cost items, it is not known whether the legislature will take an expansive or restrictive view of the term.

Two other features of the Massachusetts public employee bargaining statute deserve mention: provisions for binding arbitration and a service fee. It is permissible to negotiate a grievance procedure that culminates in binding arbitration. If the contract does not include binding arbitration, the labor relations commission may order it at the request of either party.

The act permits the negotiation of a service fee to be paid to the exclusive representative. The representative is required to make available to its members a detailed written financial report in the form of a balance sheet and operating statement.

## Collective Bargaining Activity in Massachusetts

An American Federation of Teachers (AFT) affiliate won the first collective bargaining election in a postsecondary institution in Massachusetts at Southeastern Massachusetts University in April 1969. The Boston State College faculty also chose the AFT in November 1969.

Table I shows that as of July 1, 1975, the faculty at 13 of the 31 public campuses in Massachusetts had decided to adopt collective bargaining, and the faculty at five public campuses had rejected it. In addition, the faculty at seven private institutions had voted for collective bargaining and the Dean Junior College faculty had voted not to unionize.

## Three Cases

Southern Massachusetts University (SMU) was established by an act of the 1960 Massachusetts Legislature that merged two small state institutions, the Bradford-Durfee College of Technology in Fall River and the New Bedford Institute of Technology. Originally called Southeastern Massachusetts Technological Institute, its name was eventually changed to SMU. Prior to the merger of Lowell Tech and Lowell State, SMU was the only regional university in Massachusetts.

According to Carr and Van Eyck, three major factors led the faculty to elect a collective bargaining agent.[2] First, the faculty senate had failed to achieve authority and prestige in the existing system of university governance. Second, there was a major controversy over the way in which faculty salary increases were determined. For the previous few years the legislature had been granting the state's postsecondary institutions five-percent increases in faculty salary appropriations per year specifically designated for merit increases. The president and the deans embarked on a program of granting these special merit increases to part of the faculty in a highly selective fashion. Apparently the administration wanted to develop a "true" merit system as a means of building a strong faculty, but faculty came to perceive this process as grossly unfair. Third, certain controversial faculty personnel action increased campus tension significantly during this time.

The first contract went into effect in June 1970 and was intended to run through June 30, 1973. A second contract was negotiated in December 1972, however, and by mutual agreement was put into effect Jan. 25, 1973. This agreement runs through June 30, 1976. Both contracts were negotiated under the 1968 statute and financial items were not bargainable.[3]

When the new statute went into effect, a supplemental agreement was negotiated between the parties that included such controversial clauses as a cost-of-living percentage increase to be based on the consumer price index average of the U.S. Bureau of Labor statistics and certain other adjustment

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[2]Robert K. Carr and Daniel K. Van Eyck, Collective Bargaining Comes to the Campus, (Washington, D.C.: American Council on Education, 1973) pp. 142-43.

[3]Joseph J. Orze, "Faculty Collective Bargaining and Academic Decision Making," Washington: Academic Collective Bargaining Information Service, Special Report No. 24, (September 1975).

TABLE I

FACULTY COLLECTIVE BARGAINING ACTIVITY

IN

MASSACHUSETTS AS OF JULY 1975

| American Federation of Teachers | National Education Association |
|---|---|
| +1. Becker Junior College | +1. Endicott Junior College |
| 2. Boston State College | 2. Fitchburg State College |
| 3. Bristol Community College | 3. Lowell Technological Institute |
| +4. Graham Junior College | 4. Massasoit Community College |
| 5. Lowell State College | 5. Mount Wachusetts Community College |
| 6. Massachusetts College of Art | 6. North Adams State College |
| 7. Southeastern Massachusetts Univ. | 7. Salem State College |
| +8. Wentworth College of Technology | 8. Westfield State College |
| +9. Wentworth Institute | |
| 10. Worcester State College | |

| American Association of University Professors | No Representative Victories |
|---|---|
| +1. Boston University | +1. Dean Junior College |
| +2. Emerson College | 2. Holyoke Community College |
| | 3. Massachusetts Maritime Academy |
| | 4. Quinsigamond Community College |
| | 5. Springfield Community College |
| | 6. University of Massachusetts at Amherst |

+ Private Institution

in the financial and fringe package. The supplemental agreement went to the legislature for its appropriation in December 1974. As of fall 1975, no appropriation had been passed.

The impact of collective bargaining on SMU has been studied in another context and here we concentrate only on the implications for state-institutional relations. During the first agreement the state department of personnel attempted to play an observer's role in the negotiations. In addition, a state negotiator from the governor's department of administration and finance was to represent the state's view on management's bargaining team as to the negotiability of certain issues. These observer roles never were successful, according to university-based interviewees, and the university's management and faculty were successful in getting these observers to withdraw from the negotiations. Since that time, the university has conducted its bargaining independent of state involvement.

It is also apparent that the supplemental agreement negotiated in December 1974 was signed independent of significant prior consultation with state officials. There is some concern by officials in the capitol that the agreement is too generous and doubt has been expressed that it will ever be ratified by the legislature.

In January 1975, an administrative bargaining unit elected the faculty federation to represent them for the purposes of collective bargaining. There were approximately 45 administrators in this unit, which excluded only people reporting directly to the president, e.g., deans and comptrollers. The major motivation for the unionization of middle management was the need for job security and the feeling that the legislature would not grant raises to anyone who was not in a collective bargaining unit.

The Massachusetts State College System is a 10-campus state college system with a board of trustees that has handled the negotiations for the individual campuses. Elections have been held on eight of the 10 campuses and only Massachusetts Maritime Academy faculty have specifically chosen not to bargain. The faculty at Framingham are in the process of having elections whereas the Bridgewater faculty have made no attempt to unionize.

The deputy director of the board of trustees was the chief negotiator for management in the early agreements signed at Boston and Worcester State Colleges, and institutional administrators served as members of the team. In recent years, however, the board has retained an independent attorney as chief negotiator.

The pre-1975 bargaining philosophy of the systemwide board of trustees has dominated negotiations at each of the campuses in the system. The deputy director of the board articulated the philosophy, now known as comprehensive negotiations, that dictated that the scope of negotiations be broadened to include campus governance as a major item in the contract. When the negotiations began, in 1969, the board proposed to the union that ways be sought in the contract to secure to all faculty and the students partnership with the administrators in the academic affairs of the institution. This proposal was based on five key conditions that are presented in the following paragraphs.[4]

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[4]Donald E. Walters, "Collective Bargaining in Higher Education," College Management (May, 1973) pp. 6-7.

First, the process and machinery for governance that was to be included in the contract was to exist independent of the union local on the campus and outside of its exclusive dominion and control. Second, each and every member of the bargaining unit was to be entitled to participate in a negotiated system of campus governance, whether that individual was a dues-paying member of the local or not.

The third principle recognized that, although the contract negotiated a campus governance process that was advisory in form and in effect, it would at all times be recognized for its integrity by the administration. A fourth principle established that governance would include equally faculty, students and administrators in the contractual process of decision making.

The fifth principle established an exception to this fourth principle by recognizing that the faculty had special and dominant interests in matters affecting their evaluation, their workload and the grievance procedure established by the contract. In these matters a dominant role was assigned to the faculty.

Many of the Massachusetts state colleges had rather lengthy traditions of authoritarian administrative control and limited faculty participation in governance. The board of trustees seized upon collective bargaining as an opportunity to enhance the role of the faculty and require faculty involvement in the governance process. The first two agreements, signed in 1972 at Boston and Worcester State Colleges, also had extensive provisions for student participation in governance through collegewide councils and student evaluations of faculty.

Although negotiations were coordinated through the deputy director's office, there was no systemwide bargaining. The deputy director served as chief negotiator but the various administrators at each campus served on the negotiating team for management. The same faculty consultant represented the four AFT schools during the negotiations and the same Massachusetts Teachers Association staff member chaired the faculty team at each of the four NEA institutions.

Certain structural changes in bargaining have been undertaken because of the fact that money and fringe benefits are now bargainable issues. During the spring and summer of 1975, the board of trustees management team has been bargaining with the three AFT schools on a two-tier basis. The board bargains with the three schools at the system level on questions involving economic items and with each individual institutional on local governance and local noneconomic terms. In the fall of 1975, the state college board of trustees signed agreements at Worcester State College and the Massachusetts College of Art. The faculty of Boston State College failed to ratify an agreement in the fall of 1975. Preliminary indications are that these three agreements contain similar financial packages for all three institutions.

The Massachusetts Teachers Association (MTA) represents four institutions and has refused to bargain financial matters for all four at one time. As a result of this position, negotiations are occurring at each campus on both economic and governance items. As of fall 1975, no agreement had been signed under the new law with a state college represented by the MTA.

The Massachusetts Legislature was delayed in passing the fiscal 1976 budget. As a result, the colleges were operating on 90 percent of their fiscal 1975 appropriation and, at this writing, negotiations were taking place over the size of the financial packages for the institutions.

For community colleges, the campus-by-campus election-negotiation framework was also adopted by the Massachusetts Board of Regional Community Colleges. In the negotiations at the first two community colleges, Bristol and Massasoit, the president of the systemwide board was management's chief negotiator. Members of the institution's administrative staff were also on the bargaining team. In negotiations at the third college, the board's director of personnel, together with members of the administration of the college, composed management's bargaining team. The dean of the faculty at the college chaired the bargaining team.

Interviews with community college board staff and campus-based administrators revealed that the board took a strong role in the evolution of collective bargaining in the system. At one college, the dean of the faculty served as management's chief negotiator for most of the sessions. When the negotiations, which lasted 15 months, were nearing completion, a disagreement between the dean, on the one hand, and the president of the college and the president of the board on the other led to the dean's resignation from the bargaining team.

Another member of the college administration took over as chief negotiator. At this late date, the board's director of personnel put a complicated faculty evaluation plan on the table and succeeded in achieving its acceptance. The dean, in an interview, expressed his belief that he never would have agreed to propose this if he had remained as chief negotiator and that this was clearly the board's proposal, not the college management's. The evaluation system has led to more than 20 grievances during the 1974-75 academic year and apparently a good number of these will eventually go to arbitration.

Under the new collective bargaining legislation, the community college board took the initiative to seek a different collective bargaining unit. In May 1974, petitions were filed at three other community colleges within the system, Cape Cod, Berkshire and North Shore. The labor relations commission froze these petitions until after July 1974, when the new law was to go into effect.

The community college board also was asked by the faculty at Massasoit Community College to renegotiate their contract, which was due to expire. The board refused to reopen negotiations on the basis that campus units were no longer appropriate. Motivation for this claim was the desire to bargain salaries and fringe benefits on a systemwide rather than an individual campus basis. The faculty association filed a prohibited practice charge against management, which responded by asking for a consolidated unit hearing.

In the hearings management has taken the position that the only appropriate unit would be one covering all 15 campuses and that a new election ought to be ordered to determine whether all systemwide faculty want to be unionized. In a May 1975 decision, the Massachusetts Labor Relations Commission agreed with management's position that a systemwide unit would be appropriate. The unit is composed of faculty and academic support staff, the latter being defined as librarians and counselors. An election has been ordered for the third week in December 1975. (The election was won by the NEA affiliate.)

## The Impact of Collective Bargaining on State-Institutional Relations

The weak 1967 bargaining law limited the impact of state government on institutions of higher education in Massachusetts. In preparation for collective bargaining under the 1974 law, two significant acts were taken, one by the legislative branch and another by the executive branch of state government, which have the potential to change this.

In 1967, the Massachusetts Legislature wanted to raise faculty salaries in order to make them comparable to those in surrounding states. The legislature adopted the practice of adding a merit raise figure to the cost-of-living adjustments awarded other state employees in the Commonwealth. These cost-of-living adjustments have varied from approximately 12 percent in January 1969 to a low of 3.3 percent in January 1973. The last adjustment, awarded in January 1974, was 6.2 percent. In each of these years from 1967 to 1974 the legislature added a 5-percent merit adjustment to faculty salaries in addition to this cost-of-living adjustment. Each institution had the capacity to determine how it would distribute these merit monies.

In the spring of 1974, a legislator attached a rider to the appropriations bill that stated that there would be no more merit increments in the postsecondary sector except those negotiated through a collective bargaining agreement. A number of administrators in Massachusetts have characterized this as an attempt by a single legislator to "punish" higher education. Regardless of the motivation for such a change, it made a clear announcement to faculty that the legislature expected them to take advantage of the opportunity to unionize under the new statute.

In addition to this legislative act, the governor has refused to put money for increases in faculty salaries into the budget. He has made it plain this is a bargainable item and he expects the faculty to negotiate any changes in their economic benefits. Presumably a supplemental appropriation would be passed by the legislature to cover the costs of any collective bargaining agreements, but this has yet to be determined.

There are other aspects of normal state-institutional relations in Massachusetts that do not appear to have been affected by collective bargaining. For example, the general rules and regulations of the Massachusetts Department of Personnel and Standardization normally apply to nonprofessional and, in some respects, professional employees in colleges and universities in the Commonwealth. This is the so-called "Red Book" and reference to it is incorporated into many of the early collective bargaining agreements, especially those between institutions and nonprofessional employees.

It has been the practice in Massachusetts for the appropriations bill for the separate higher education boards to include reference to the approximate percentages in rank that would be appropriate expenditures of the money. It may well be that this will continue to be the practice.

The failure to include financial matters within the scope of negotiations has limited the impact of collective bargaining on state-institutional relations. There is evidence that faculty salaries and fringe benefits will be given closer scrutiny by the governor and legislature under the new statute. The potential impact here is great, but actual experience is lacking.

It is clear that the state college board of trustees has used collective bargaining as a device to create, practically de novo, extensive governance machinery on the campuses. To the extent that this would not have been achieved, absent collective bargaining, campus autonomy has been eroded. Under previously existing governance arrangements at one state college campus, a single long-term president had been able to resist significant movement toward greater faculty participation in governance. The heavy hand of the systemwide board in collective bargaining, together with the coming of a new president, has resulted in greater faculty involvement but also in less campus autonomy.

The community college board is clearly moving in the direction of greater centralization of faculty personnel policies. Whether this carries over into other areas will probably depend on the ultimate scope of the agreement.

# FACULTY BARGAINING

# IN

# ALASKA AND MONTANA

by

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## Introduction

The early experience with faculty bargaining has been written in the highly industrial states of the Eastern and Midwestern sections of the country, with only one or two exceptions. The future of faculty bargaining may well be determined by the experience in such mid- and far-western states as Minnesota, Illinois, Wisconsin, Alaska, Montana, Oregon, California and Colorado. This paper reports on the early development in faculty bargaining in two of these states, Alaska and Montana.

The paper follows the general format of the earlier ones in this monograph. This paper has a major section on Alaska and another on Montana. Each state's higher education system is described, the major features of the relevant statutes are analyzed, collective bargaining activity is summarized and the administrative organization for bargaining is reported. The paper concludes with a discussion of the possible implications of the early experience in these two states.

## ALASKA

Alaska is a land of extremes in terms of geography (one can travel 1,400 miles by air and not leave the state); topography (Mount McKinley is 20,000 feet high); climate (temperatures can range from -50 degrees in Fairbanks to +45 in the southeastern part of the state on the same night); and population (there are Eskimos, Aleutes and a variety of native Americans as well as Anglos in the state). The University of Alaska's experience with faculty bargaining also borders on the unique. It is the first multicampus university system that has agreed to separate its community colleges from its four-year institutions for the purposes of negotiations. The first negotiations were resolved by an arbitrated settlement that resulted in raises for unionized community college faculty, which are substantially in excess of those for nonunionized faculty in the four-year institutions. These developments occurred in the 1974-75 academic year and their long-range impact is not yet apparent.

### The University of Alaska

The University of Alaska was established in 1917, but was further defined in the 1949 constitution (Article VII, Section 2), which designated land in Fairbanks as the central site of the university since Alaska Agricul-

tural College and School of Mines were located in that city. Article VII, Section B, specifies that the board of regents of the University of Alaska is to be appointed by the governor, subject to the confirmation of a majority of members of the legislature. The president of the University is the executive officer of the board of regents.

The University of Alaska is a multicampus system organized into three regions and 11 campuses. The northern region consists of the University of Alaska and Tanana Valley Community College, both in Fairbanks. Another community college, which will be located in Nome, is being planned. The southcentral region consists of the University of Alaska at Anchorage, Anchorage Community College, Matanuska-Susitna Community College at Palmer, Kenai Community College at Soldotna, Kodiak Community College on Kodiak Island and Kuskokwim Community College at Bethel. The southeastern region consists of the University of Alaska at Juneau, Juneau-Douglas Community College at Juneau, Ketchikan Community College at Ketchikan and Sitka Community College at Sitka. There are, then, three senior colleges and eight community colleges within the University of Alaska system. The largest institution of the eight is Anchorage Community College, founded in 1954, which had close to 6,500 students in the 1973-1974 academic year.

The university has a number of systemwide officials located in Fairbanks. Each of the three regions, which consist of one senior college and from one to five community colleges, has a provost. Each dean or director of a campus reports to a provost, each of whom has a staff. In short, the University of Alaska is a highly centralized system.

## The Collective Bargaining Statutes

Collective bargaining in Alaska is conducted under a 1972 Omnibus statute that covers all public employees in the state, except school districts that are covered by a 1970 statute. The declaration of public policy in the first section of the act is quite similar to that included in the Hawaii statute and establishes a public policy in favor of joint decision making. This statement of policy clearly puts the legislature in favor of collective bargaining as a major vehicle to accomplish joint decision making.

The statute permits negotiation of either a union shop, where the employee must become a member of the union 30 days after becoming employed, or an agency shop, where the employee must pay a fee to the union for the expense of representing the members of the bargaining unit. The statute also provides for mediation and arbitration. There are three classes of public employees defined in the act and that class composed of policemen, firemen and other designated essential employees is enjoined from strike activities. Educational employees are permitted to strike after mediation has proved ineffective. If an impasse still exists after the employer or labor relations agency receives an injunction to halt a strike, the parties are required to submit to binding arbitration. As reported later in the paper, this clause proved to be crucial in resolving an impasse in the University's negotiations.

Two other features of the act are important. The monetary terms of any agreement are subject to funding through legislative appropriation and the board of regents is defined as the public employer in the case of the University of Alaska.

Collective Bargaining Activities

On Dec. 5, 1973, the American Federation of Teachers (AFT), Local 2404, at Anchorage Community College, petitioned the dean of the college for recognition as the exclusive representative. The petition included only the faculty of Anchorage Community College. While members of the systemwide administration favored one multicampus unit composed of all faculty, the board of regents eventually authorized a statewide unit consisting of only the eight community colleges and excluding the faculty of the three four-year institutions. After extended discussions concerning the appropriate definition of a bargaining unit, the parties accepted a unit on May 8, 1974, consisting of the faculty of the eight community colleges including all academic and vocational instructional personnel, librarians and counselors but excluding those administrators not elected by the faculty and all other persons not employed at least 60 percent or full time. The AFT won the May 1974 election.

Negotiations began in earnest in late August 1974. The bargaining team for management was headed by the systemwide vice president for finance, the university attorney, the provost of the southeast region and an assistant dean of Anchorage Community College. The strategy and policy team for the university consisted of these individuals plus the executive vice president, one director of a community college, the statewide director of extension centers, the provost of the southcentral region, the dean of Anchorage Community College and the systemwide vice president for academic affairs.

The union engaged in a brief, illegal strike in late October, but went back to the table after both parties agreed to continue mediation. (The strike was illegal since Alaska's public bargaining statute allows strikes only after mediation has failed and a membership vote has been taken. Neither of these requirements had been met when the strike occurred.) The union took the formal steps necessary and went out on strike again on Nov. 14, 1974. The strike lasted until Dec. 6, when the university was able to get an injunction, under the provisions of the Public Employees Relation Act, by which both parties were forced to binding arbitration. At the point of arbitration, 17 items remained unresolved, including salary schedules, workload, union security (agency shop) the role and pay of department chairmen, the length of the contract, union office space and various other faculty benefits.

The arbitrators were the chief negotiators for each side plus an external arbitrator from New York. The arbitration panel made settlements on all the outstanding items, usually by a vote of 2 to 1. These arbitrator decisions were, of course, binding on both parties.

The contract for the community colleges "averaged out" to 30 percent faculty pay raises. The university requested a $1,026,700 supplemental appropriation to cover the cost of the arbitrated contract. Almost all of these costs were to pay salary increments. Just before the legislature adjourned and after extended and bitter debate. the supplemental appropriation was passed. The newly elected governor threatened to veto the appropriation, but signed it under protest and issued a statement that he wanted the citizens to seriously question the effectiveness of the collective bargaining statute.

One of the unique features of the contract is that the university administration has applied its benefits only to the community colleges and not the four-year institutions. The four-year institution faculty will

average raises of closer to 15 percent, compared to the 30 percent negotiated through the collective agreement. This has obvious implications for the future of collective bargaining at the four-year institutions. To this writer's knowledge, no other such obvious examples of financial benefits accruing to faculty under collective bargaining are found in American postsecondary education.

## MONTANA

In the world of postsecondary education and faculty collective bargaining, Montana has many unique features. It was the first state to include a student as a voting member of the board of regents and it was the first state to pass a statute that allows students to become formally involved in faculty collective bargaining. Another interesting development in Montana is the fact that campus-by-campus bargaining occurs under the coordinated direction of the board of regents. These factors are all fairly recent developments in Montana, and their eventual impact has to be determined.

### Higher Education in Montana

For most of this century, the Montana public system of postsecondary education was organized under a single board of education, which controlled all education from kindergarden through graduate school. In more recent years, the board of regents had an executive secretary who handled the state's four public four-year colleges and two universities.

The Montana Constitution of 1973 changed the entire structure of education in the state. It established two boards for direct control of education. The board of regents was delegated full power, responsibility and authority to supervise, coordinate, manage and control the Montana University system. The regents were also given a shared responsibility with three local boards of trustees of the community colleges, a responsibility that is still being defined.

The constitution also provides for a commissioner of higher education who is the agent of the board of regents and has considerable directional powers over the system. The commissioner presides over six four-year institutions and three related community colleges, each with its own unique geographical and historical features.

The University of Montana at Missoula was founded in 1893. It is a complex university with graduate and law schools. Montana State University at Bozeman is also a large complex university with strong agriculture and forestry schools.

Montana Technical College in Butte has a history of strong engineering and technical programs but has experienced some difficulty in maintaining enrollments in the liberal arts areas. Eastern Montana College in Billings has approximately 3,000 students. Northern Montana College at Havre has approximately 3,000 students and Western Montana College at Dillon has an enrollment of approximately 700.

There are three community colleges all with fairly small student enrollments. Flathead Valley Community College is located at Kalispell in

northwestern Montana, Miles City Community College is located about 100 miles east of Billings and Dawson Community College is located at Glendive.

The History of Public Employee Bargaining in Montana

In 1969 Montana passed a bargaining law for nurses in public and private health care facilities that covered these personnel in both state or municipal situations. This was a limited statute but it contained the first strike provision in Montana's history of public employee legislation.

The 1971 legislature passed a collective bargaining act for school teachers and administrators that covered all K-12 personnel. The provisions of this law left a good deal of autonomy to the local school board. The same legislature failed to act on omnibus public employees bill, but did continue to study public employee bargaining.

The 1973 legislature passed an omnibus bill but it excluded public school teachers. This law contains a strong management rights clause, allows an agency shop and establishes the board of personnel appeals as the labor relations agency for public employees and employers. It also establishes a procedure for religious objection to agency shop that has been used as a model in other states. The scope of bargaining in this act is the traditional wages, hours and terms and conditions of employment.

The actual passage of legislation applying to postsecondary personnel gets rather complicated at this point and consists of a series of amendments to the omnibus collective bargaining bill. The details of this proposed amendment and the adopting of others is useful history for those concerned with the applicability of statutes to postsecondary education.

In a special session in 1974, the legislature considered an educational employees bill to go into effect on July 1, 1974. Originally this bill would have given special status to postsecondary education, but it never was passed. One of the more interesting clauses in the proposed bill was a prohibition against interfering with the right of a faculty senate or similar representative faculty body from consulting with and advising any unit of the administration concerning matters of policy. Absent such a special clause in the statute, many observers of postsecondary education fear that traditional faculty senates and consultative mechanisms may be ruled employer-dominated company unions and prohibited by a public relations labor board. Such special statutory status for postsecondary education in Montana was not actually enacted however.

Eventually the 1975 legislature incorporated postsecondary personnel into the 1973 omnibus collective bargaining bill, thereby denying any special status for colleges and universities. Other major amendments to the 1973 omnibus bill moved public school teachers from separate coverage into the omnibus bill and repealed the original 1971 bill. A specific clause in the 1975 bill specifies that the act does not limit the authority of the legislature or a governing board relative to appropriations for salaries and wages, fringe benefits and other conditions of employment. The commissioner of higher education is designated as the employer.

Perhaps the most widely reported feature of the 1975 amendment is

that which provides certain rights for students. The clause reads as follows:[1]

> When the board of regents is the public employer defined in this section, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees to observe those negotiations and participate in caucuses as part of the public employees bargaining team and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of the negotiations.

The 1975 amendments became effective on April 10, 1975. Since the amended law is so new, and most of its features did not go into effect until July 1975, there remains ample opportunity for testing its provisions. Questions of unit determination, clarification of relationships between the board of regents, the commissioner and the boards of the community colleges and the role of students all remain to be resolved.

## Faculty Bargaining Activity

Since it was not clear to administrators and faculty alike that postsecondary education was included in the 1973 omnibus bargaining bill, there was little preparation for collective bargaining. However, other events were raising tension levels. In December 1974, the legislature received a report from a Montana Commission on Postsecondary Education, which was authorized by the 1973 session. The commission had been vigorously debating the possibility of closing Western Montana College and restructuring the mission of Montana Tech. The 1975 legislature passed a two-year salary package for faculty that included five-percent and six-percent annual raises. (The Montana Legislature meets only every other year.)

This combination of a relatively hostile legislature and modest salary increases set the stage for a series of collective bargaining unit determinations in the spring of 1975. These involved Northern, Eastern and Western Montana Colleges and the University of Montana and Dawson Community College (see Table I). In May 1975, Miles City Community College signed its 1975-76 meet and confer contract, an extension of the previous agreement between faculty and administration. Dawson Community College unit determination and election resulted in the certification of a local American Federation of Teachers. At Northern Montana College, the Montana Education Association won a 32-to-28 victory over the American Federation of Teachers local. There was no real opposition to the education association at Western Montana. At Eastern Montana the first alliance between an American Federation of Teachers local and an AAUP chapter was consumated and the result was a certification of the combined agent (see Table I for a summary of activity).

[1]Montana Legislature, House Bill 656, Session 1975.

TABLE I

FACULTY BARGAINING ACTIVITY IN MONTANA

AS OF FALL 1975

| Institution | Year Organized | Exclusive Representative | Contract Status |
|---|---|---|---|
| Dawson Community College | 1975 | AFT | In negotiations after fact-finding impasse. Contract will be for two years (1975-77). |
| Eastern Montana University | 1975 | AFT-AAUP Joint Agent | In negotiations |
| Flathead Valley Community College | Not yet organized | | No activity toward an election |
| Miles City Community College | 1973 | Local faculty organization | 1973-75 contract 1975-76 contract |
| Montana State University | Not yet organized | | No activity toward election |
| Montana Technical College | Not yet organized | | Faculty preparing to ask for a representative election |
| Northern Montana College | 1975 | MEA | In negotiations |
| University of Montana | Not yet organized | | Unit determination completed, election winter 1975-76 |
| Western Montana College | 1975 | MEA | In negotiations |

The Structure for Bargaining

The framework for these separate campus elections and subsequent campus-by-campus negotiations was set by the board of personnel appeals, which is the Montana Public Employment Relations Board. In the spring of 1975 the board had determined that there would be no systemwide unit for the six colleges and ordered the board of regents to bargain with each institution independently.

The problem for the board of regents became how to conduct bargaining in a decentralized, yet coordinated, manner. Since the legality of the commissioner's and the board's authority over the community colleges was ambiguous, it was determined to let these institutions conduct their own negotiations and to provide consultation throughout the process from the commissioner's office. There continues to be careful review of the bargaining being conducted at the community colleges and a careful step-by-step coordination of those efforts. The Dawson Community College Board hired an independent consultant and used the commissioner's staff for legal and technical advice. The Dawson Board's bargaining team consists of two trustees and a vice president of the college. The bargaining unit has 29 faculty members.

The plan developed for the four-year institutions in the system consists of two policy teams. The first is a board of regents statewide policy team that consists of three regents, including the student regent, the commissioner of higher education, the associate commissioner for legal affairs and his deputy, the assistant commissioner for fiscal affairs and budgets, the president of Western Montana College and the academic vice president from Montana State University.

The local campus policy committees at Eastern, Western and Northern Montana Colleges, contain one regent and the two attorneys from the central team, the president, academic vice president, chief fiscal officer and two other officers of the administrative staff of the local institution, plus the local student agent, should that individual choose to exercise the option to sit with management's policy team. In two of the three cases the student member has chosen to exercise this option.

The actual bargaining team consists of two board attorneys plus two members (but not the president) of the local administration. The local policy teams meet before and after each session, whereas the statewide team meets once a month just before the regent's monthly meeting. The two policy teams meet jointly when a major contract counter proposal is being developed.

Since most of the negotiations and eventual signing of contracts will occur during the 1975-76 academic year, it is too early to tell what the eventual relationships will be between the systemwide administration and those based on campuses. The campus-by-campus election-negotiation framework has the potential for providing centralized coordination and avoiding the danger of whip sawing while at the same time preserving local campus autonomy over terms and conditions of employment. Whether this potential will be realized remains for future comment based on the experiences of the first few contracts.

Discussion of the Alaska and Montana Cases

Alaska and Montana represent states in which collective bargaining activity is still evolving. Although it is too early in the collective bargaining process to make definite conclusions about the results, some interesting possibilities are evident.

To our knowledge, the University of Alaska is the first multicampus institution that has split its two-year campuses from the four-year campuses for the purposes of collective bargaining. The City University of New York, the University of Hawaii and, to some extent, the State University of New York have all maintained their unity by incorporating these campuses into a master agreement. The University of Pittsburgh and the Pennsylvania State University have resisted petitions by the faculty in their branch campuses to be split off for the purposes of collective bargaining. There has been a major debate among scholars as to whether or not the diverse interests of the community colleges should be separate from the more research-oriented faculty at four-year institutions and research centers. Alaska should provide an adequate test of the effect of such a split on institutional unity. It is possible that the two-year faculty agreement in Alaska is so generous that the four-year faculty will have no alternative but to unionize.

In Montana, the campus-by-campus election-negotiation framework has the potential for maintaining campus autonomy while at the same time providing some systemwide coordination. If the Massachusetts experience with campus-by-campus bargaining is instructive, the systemwide board will find it necessary to coordinate and control the financial packages while leaving local governance items to the administration and faculty on each of the campuses. Whether such an arrangement develops and whether it is viable in the longer run will be interesting to chart in Montana.

The influence of students by collective bargaining will receive a real test in Montana. Their involvement is still evolving and its eventual form is still not certain.

In both states unionization appears to be at least a partial response to the faculty's perception of a hostile legislature and state government. Indeed, the generous arbitrated settlement reached by the administration and faculty in Alaska may have increased gubernatorial hostility toward faculty interest.

It is apparent from the experience in both states that the administrations and boards of regents are victims of legislation passed for other public employees and not the molders of that legislation. These administrators and regents have been slow to see the implications of collective bargaining for their institutions, an experience that appears to be a national phenomenon.

Finally, the use of arbitrators to settle contract negotiation disputes has received a real test in Alaska. The legislature and governor have been quite reluctant to pass appropriations that are determined by external agents and it will be interesting to see whether these procedures are continued.

# PART III

# SUMMARY AND CONCLUSIONS

# PATTERNS OF STATE-INSTITUTIONAL RELATIONS UNDER COLLECTIVE BARGAINING

by

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## Introduction

The papers in this volume have described the experience with faculty bargaining and the interactions between state governments, state systems of higher education and campus-based constituencies in eight states: Michigan, New Jersey, New York, Pennsylvania, Hawaii, Massachusetts, Alaska and Montana. The purpose of this paper is to make some comparisons, based on these papers and my own experience, between the states.

The paper begins with a discussion of the nature and scope of bargaining laws in the eight states. Although the papers are not completely uniform in dealing with all aspects of the statutes, the first section of the paper makes some comparative observations about unit determination, the identification of the employer, the scope of bargaining and dispute settlement mechanisms.

The second section of the paper specifies four basic structural, state-level patterns of faculty bargaining and a third discusses the composition of bargaining units. The next section summarizes a basic trend that appears in seven of the eight states: the centralization of faculty personnel policies that appears to be associated with collective bargaining. The trend is not, however, unidirectional as the next section of the paper notes. The paper concludes with a discussion of the quality versus homogenization versus institutional distinctiveness dilemma.

## Nature and Scope of Bargaining Legislation

The states studied all have similar collective bargaining laws. These public sector acts cover almost all public employees in a comprehensive omnibus act and give them the right to bargain collectively through unions of their own choosing. Each state has an administrative agency, a public employee relations board or commission, to provide the secret-ballot election device for an expression of free choice and to establish rules and procedures to insure the fairness of the election and organizing campaigns.

## Unit Determination

An important and often neglected topic is the influence of general criteria for determining nonfaculty bargaining units on faculty unit determinations. The general criteria are expressed by the law and interpreted by the public employment relations boards (PERBs). The range between the various states is wide. Hawaii left nothing to chance and little to interpretation. The act legislated specific bargaining units, leaving open only the peripheral

questions pertaining to scattered isolated classifications. By law the unit includes the faculty of the entire state university flung over several islands and ranging from the flagship University of Hawaii (Manoa Campus) to the two-year institutions.

Other states, such as Pennsylvania, used euphemisms to identify the need for large statewide bargaining units. The use of terms like "an identifiable community of interest" and the warning about avoiding "the effects of overfragmentization" served as guidelines for the formation of large bargaining units.

New York came to the same conclusions by using such unit determination criteria as a community of interest, the identification of the government level with the power to agree or to make effective recommendations and an insistence that "the unit shall be compatible wi the joint responsibilities of the public employer and public employee to serve the public." The New York criteria have been interpreted by the PERB to mean it will seek the most appropriate unit. New Jersey and Massachusetts also used the criteria of "community of interest," and the conclusions were similar.

It is interesting that regardless of the exact wording used to serve as criteria and guidelines for unit determination most of these various states have opted for a similar interpretation of unit structure for nonfaculty personnel.

First they identified the existing structure within the state. The resulting unit reflected this structure. (This will be developed below in an analysis of the higher education institutional structures and their bargaining structures.)

Second, they opted for bargaining units that were large, statewide and inclusive of broad clusters of similar occupational groups. They rejected a viable alternative that would allow bargaining units to reflect the departmental and subdepartmental structure of the state government, as was found in Massachusetts before the 1974 act and as exists now in Rhode Island and Delaware, to cite a few states where units for state employees have been fragmented.

The third point is an historical note. These states were not operating in isolation. Each was interested in what other states were doing. Nor did the formulation of faculty bargaining units take place independent of these developments in nonfaculty bargaining. For example, the New York Public Employee Relations Board decisions on the structure of bargaining units had tremendous impact on other states.[1] The New York PERB rejected Governor Rockefeller's attempt at a unit coup. He recognized and then bargained with the state civil service association (CSEA). When the PERB rejected this unit and established its own structure of seven basic units, it resulted in the pragmatic solution of clustering most state employees according to major occupational groups. One of these units was a professional unit for the State University of New York. The use of the word "professional" was very deliberate. It was intended to avoid the more narrow term "faculty."

[1] Jerome Lefkowitz, The Legal Basis of Employee Relations of New York State Employees, Association of Labor Mediation Agencies, 1973.

"Professional" was meant to include the basic teaching faculty and some administrators, as well as nonteaching professionals, in a broad-based, statewide, comprehensive unit.

The New York decision in favor of large occupational groups had a major impact on New Jersey, Pennsylvania, Hawaii and recently on Massachusetts. Hawaii fashioned a similar structure and enacted it by statute. Hawaii has a statewide unit, but certain classes of professionals and administrators are in a separate unit. The New Jersey and Pennsylvania PERB's held hearings, studied the problem and found a similar basic unit structure for state employees. The first Massachusetts decision under the new law, which came out in 1975, opted for ten basic classification units for state employees, similar to Hawaii's and close to the other states.

It is important not to be misled by the improvisation that followed. For example, Pennsylvania negotiated a master agreement for state employees simply because the American Federation of State, County and Municipal Employees (AFSCME) captured most of the bargaining units. Much the same thing has happened in Hawaii, again with AFSCME taking the lead in working out master agreements or uniform language for several bargaining units.

## Identification of the Employer

Legislation has a significant impact on the difficult problem of identifying "the employer" and in turn determining who shall bargain. Hawaii attempted a compromise even though it put the control of the higher education collective bargaining in the hands of the governor's representative. The law guarantees participation by the university and provides for direct participation by members of the board of regents. Massachusetts specifically identifies the state college board as the negotiator for the state college system, as does Florida. The New Jersey and Pennsylvania laws are silent on who is the higher education employer, but both negotiating procedures are similar in that the executive branch of state government plays a direct role at the bargaining table only in the state college sectors.

After the initial experience, Pennsylvania turned over the conduct of negotiation to the office of the secretary of education. The office of labor relations in the department of administration has ultimate control but plays a passive role. There is liaison and interchange of personnel and communication but the state college system has been negotiating with an increasing degree of autonomy and may come to resemble what has been in existence in Massachusetts. Temple and Lincoln Universities, both of which are state related, negotiate without significant state involvement.

New Jersey is similar to Pennsylvania. It is important to note Begin's analysis that the state's centralized control of the state colleges was a continuation of the previous authority structure. Collective bargaining enabled more centralization after the act of 1966 seemed to grant the individual state colleges more autonomy. Rutgers maintains local control with little disruption, but central control is a major factor on economic issues. The unions may aid this centralization process by end runs.

Begin also identifies a redistribution of administrative authority as associated with bargaining. There are other variations. Florida, for example, identifies the state university system as the employer, for faculty purposes

only, rather than the state. Michigan does not provide for classified state employee bargaining and since it has no higher education "system," bargaining is local and autonomous.

In short, the identification of the employer may create tensions by placing the control of negotiations not in the institution but in a board of higher education, a systemwide board or the executive branch of government. This has been the case in New York, New Jersey and Hawaii and partially the case in Pennsylvania, Massachusetts, Alaska and Montana.

## Scope of Bargaining

The appropriate scope of negotiable issues is an especially difficult problem in higher education because of the traditions of extensive faculty involvement in affairs that are considered management functions in nonfaculty and private sector bargaining. In colleges and universities, members of the faculty bargaining unit may hire and fire their own peers. Administrators lean heavily on the advice and counsel of faculty members in planning curriculum and in judging its quality.

This leads to a brief observation on the weak, frayed thread running through all of these papers. The scope of bargaining, that is, which issues are bargainable, which issues are legally barred from the bargaining table and which issues may not be mandatory for bargaining but may be voluntarily negotiated, is a key difference between higher education and other public employees. The scope of bargaining is related directly to the complexity of the interrelationship between traditions of faculty involvement in governance and collective bargaining, and this is one of the most difficult areas in the relationship between college and university administrators and state officials.

Many of the contracts are narrow in scope. The university units tend to accept a continuation of the traditional governance structure. This is apparent at Rutgers, Temple, some of the Michigan universities and Hawaii.

In the two cases where the contract scope is relatively broad, there was an attempt to create faculty involvement in governance almost de novo. The Pennsylvania State College and University faculty significantly broadened their involvement in state-level governance through centralized bargaining. The faculty in the Massachusetts State Colleges were virtually introduced to extensive involvement in governance through collective bargaining.

## Dispute Settlement

The various states have a wide variety of dispute settlement procedures ranging from those in Hawaii, Alaska and Pennsylvania, which allow public employees the right to strike with some limitations, to New Jersey where public school teachers with regularity have been fined and imprisoned for participating in a work stoppage. New Jersey outlaws strikes and means it. Michigan and Wisconsin outlaw strikes and usually look the other way, although some teachers have been replaced and fired for participating in work stoppages.

Dispute settlement procedures, whether they range from the fuzzy fact-finding system of New Jersey through the right to strike or the final offer arbitration systems that are now being developed by some states, do not make

an important impact on state-institution relations since there has been very little strike experience in four-year institutions. Strikes in two-year colleges are more frequent but are not reported in sufficient detail in these papers to permit extensive comparisons. The Michigan and New Jersey experiences show that when unions feel justified they will strike regardless of its legality under prevailing statutes.[2]

## The Structure of Faculty Collective Bargaining

Despite the lack of specificity of the laws and perhaps because of it, the structure of faculty bargaining in each state closely reflects the governance structure of the prebargaining era. For example, the 29-campus State University of New York (SUNY) has adopted a highly centralized bargaining arrangement, whereas the more autonomous colleges and universities in Michigan bargain separately with their respective faculties. In fact, the structure of faculty bargaining arrangements is characterized by a high level of diversity among the various states, as illustrated in the paragraphs that follow. However, there are some emerging patterns, the most striking of which is the predominance of centralized bargaining arrangements at both the state and system-wide levels. This pattern is probably more accurately viewed as a reflection of the types of structural tensions that produce faculty unionization than as a consequence of collective bargaining.[3]

There appear to be at least four definite structural patterns of faculty bargaining.[4] The first is a diverse system of higher education with a single union. In this pattern, the faculty of a large multicampus institution with two- and four-year campuses and university centers is represented by a single bargaining agent. This pattern is represented by the bargaining arrangements that have emerged in the State University of New York and the University of Hawaii where the faculty of diverse, multicampus systems of higher education bargain collectively with representatives of state government. Florida and Maine are constructed similarly.

The second pattern describes the situation in Massachusetts, New Jersey and Pennsylvania. In these cases (Nebraska and Vermont are similar) the higher education system is divided into separate sectors, each of which is controlled by its own governing board(s). The essential similarity among these states is that bargaining occurs separately and somewhat differently in each sector of the respective state systems of higher education. Within this pattern, however, the specific arrangements are somewhat diverse.

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[2] James P. Begin, et. al., Academics on Strike, New Brunswick: Rutgers University, Institute of Management and Labor Relations, 1975.

[3] Joseph W. Garbarino, Faculty Bargaining: Change and Conflict, New York: McGraw Hill, 1975, pp. 5-11.

[4] William M. Weinberg, "Structural Realities of Collective Bargaining in Public Higher Education," The Journal of the College and University Personnel Association, April 1974. These models are slightly modified and adapted to illustrate the papers in this volume.

The faculty of the research universities in each state bargain separately with their respective governing boards. The faculty of the eight New Jersey State Colleges bargain collectively with the governor's office of employee relations, while the Pennsylvania Department of Education plays the dominant negotiating role in the 14-campus state college system. The Massachusetts State College Board continues to permit campus-by-campus bargaining on some issues, although there may be some changes in this process. Although the community college faculties of Pennsylvania and New Jersey bargain separately with their respective local governing boards, the faculties of the 15 community colleges in Massachusetts will bargain with the central board of regional and community colleges. In all cases, the bargaining arrangements appear to be a direct reflection of the pre-collective bargaining statutory and financial relationships of the various institutions and sectors to their respective state governments.

A third structural pattern for collective bargaining occurs in Montana, Alaska and Rhode Island. In Montana, negotiations are coordinated by the state board of regents, but the faculty and administrators of each institution are permitted to bargain as a separate unit. At the University of Alaska, the faculty of the eight community colleges bargains as a unit separate from the four-year campuses.

The structure for collective bargaining in Michigan constitutes a fourth pattern. The colleges and universities in that state were chartered with a high degree of autonomy. Consequently, there is no centralized bargaining in Michigan. Representatives of the board for each institution negotiate agreement with their faculty and present their budgets directly to the legislature. This pattern appears to be developing in Ohio also.

The basic conclusion that emerges from the above typology is that collective bargaining has not generated any radical changes in the formal, structural relationships within the various higher education systems of the eight states currently under investigation.

## The Composition of Bargaining Units

The second organizational problem identified in the papers is the composition of the units. The inclusion of large numbers of nonteaching professionals in the same unit, as in SUNY, makes for tension. In New Jersey, the state college unit includes some administrative and professional people. Those not included in the faculty unit are in the general professional unit for all state employees. Rutgers University has a narrowly defined teaching and research faculty unit, but it also includes the professional librarians. Parenthetically, Rutgers has a graduate school of library service that serves as a convenient occupational slotting device for classifying librarians as faculty. In the Pennsylvania state colleges the original faculty unit consisted of faculty and librarians. Another unit was eventually created for administrative and professional personnel. Both units elected the same union but the board has prohibited a merger unless another election is held. New York (SUNY) has a broad, amorphous unit of faculty, administrators and professionals. It is an awkward, if not difficult, unit to administer. The contract seems to be negotiated for the nonteaching professionals and there is a certain amount of ennui on the part of the teaching faculty. The "weak union" may be a mere reflection of too much diversity within too large a unit.

Hawaii's unit composition is similar to the original Pennsylvania unit: a narrowly defined teaching group with most other administrative and professional personnel in a separate unit.

In other states (e.g., Michigan, New Jersey, Massachusetts, Delaware and Rhode Island) there seems to be a tendency for universities to define their faculty units relatively narrowly (teaching and research people only) but to include those administrators who have academic roots (e.g., department chairmen). Those institutions that have defined and limited the faculty units to the teaching craft have a tight, homogeneous unit. Although tensions may exist, they do not approximate those that exist between occupational groups in the more comprehensive units.

The analysis of SUNY and Hawaii points to a divisive force when the faculty bargaining unit is broadly based. The internal difficulties and change of unions in the New Jersey state colleges is less a reflection of tensions between occupational groups than the other factors identified by Begin: the relationship with the state, bargaining style and rival unions resulting in the classic instability of an evenly divided faculty. There are divisive forces, such as the tension between old teacher-training faculty and the newer, younger liberal arts faculty, but it seems to be less divisive than the split existing in New York and Hawaii between two-year institutional faculty and the graduate-research centers.

## Collective Bargaining and Centralization

There seems to be a persistent theme running throughout seven of the eight states in this monograph, the centralization of decision making in either systemwide or state-level agencies that accompanies unionization. (Michigan is the sole exception.) As this and the next section of this paper will show, the trend is not quite as simplistic as it might first appear.

The two most important factors for the centralization of collective bargaining in public higher education are the prior administrative structure of higher education that reflects a long-term trend toward the centralization of public higher education, and collective bargaining laws. All the papers clearly relate the importance of prebargaining administrative structure. Hawaii was already centralized; Pennsylvania "owned" the state colleges; New York had already centralized all of public higher education; the New Jersey state colleges were controlled by Trenton.

Some acts specifically legislate large units as in Hawaii, and others identify a central "employer." For example, the Florida act identifies the Florida State Board of Higher Education as the employer for purposes of negotiations. Other examples are the statutes in Montana and Alaska.

Closely related to the laws themselves is the role of the state labor-relations board. In the absence of specific legislation or of a very strong local practice, they have tended to rule in favor of multicampus bargaining units. This may be seen in New York, New Jersey, Pennsylvania, Massachusetts, Vermont and Minnesota. (Oregon, Nebraska and Montana are exceptions.)

The New Jersey, New York, Pennsylvania and Hawaii papers all note an increase of union political involvement and this also provides some pressure for centralization. If they do not do as well as they expected at the bar-

gaining table, some unions attempt end-runs to a higher authority, often the executive or legislative branch of government. Labor leaders often have easier access to the governor and his staff than many of management's negotiators. On the other side, administrators may want to deal with key union leaders rather than with local leadership. Both tendencies increase the centralization of authority under collective bargaining.

Another major factor that supports the centralization of faculty bargaining is the control of the personnel and fiscal aspects of negotiations by state executive agencies such as an office of employee relations, a department of administration or a budget office. There is a marked tendency for state agencies to insist on uniformity of purpose, concepts, fringe benefits, salary packages and contract language without regard to the union with which it is negotiating. These pressures for uniformity were particularly strong in New York, New Jersey, Pennsylvania, Hawaii and Massachusetts.

The pressures for uniform personnel policies, records and salaries is another centralizing tendency. The Duryea and Fisk paper identified the SUNY contract pressures toward uniformity. Although Begin pointed out that local governance within the 20 Rutgers colleges and schools remained relatively untouched by bargaining, Rutgers did develop more uniform personnel procedures. The New York, New Jersey, Hawaii, Pennsylvania and Massachusetts papers all detail the pressure for uniformity in salary treatment.

It is unfortunate that there is confusion between the role of collective bargaining in establishing conditions of employment and collective bargaining as an aspect of budget control. Collective bargaining is not necessarily a viable, convenient, easy-working vehicle for budget control. Budget control should be separate and apart from the bargaining process, but since salaries loom so large in higher education, which is basically a labor intensive handicraft industry, there seems to be no way in the immediate future for the trend toward centralization to abate. It is possible that what seems to be the disorganized Michigan system of "every tub on its own bottom," in which each university negotiates with the legislature for its own budget, may be a much more intelligent way of handling budgetary restraints than the centralized control that is manifest in New York, Maine, Florida, Alaska, Hawaii, New Jersey and Pennsylvania.

In summary, the statutes, prebargaining administrative structures, union and management end-runs and state pressure for uniform personnel policies and financial settlements have all contributed to centralization. The "special nature" of higher education has acted as a counter force to complete centralization in some cases, a point to be discussed more fully below.

## Collective Bargaining and the "Special Nature" of Higher Education

The trend toward centralization is not complete and unrelenting. There are factors for decentralization or at least for some kind of differential treatment that serve as a centrifugal force.

Some colleges and universities are statutorily or constitutionally autonomous. The University of Delaware's autonomy is established by the legislature and this cannot be changed by less than a two-thirds vote. The public universities in Michigan are endowed with autonomy established by the state constitution. By law, the University of Vermont is established as a

private institution. In New Jersey, Rutgers University, as a result of the acts of 1956 and 1966, maintains a separate autonomous structure, although the state plays an important role in budget determination. Some of these acts give a great deal of authority for separate and different treatment. As a result, there is much tension between the state, the board of higher education and the university's board of governors. In Pennsylvania the three major public universities, the University of Pittsburgh, Penn State University and Temple University have "state-related" status and have a higher degree of autonomy than the 14 state-owned institutions.

By custom and tradition, many states have allowed for a decentralized administrative structure, campus autonomy or some type of differential treatment. Michigan has always had a laissez-faire approach to state coordination and control, as has Massachusetts. The state of Ohio does not maintain centralized control over higher education. The chancellor of higher education coordinates and plans but does not control. Even though the universities do not have constitutional autonomy as in Michigan, the Ohio universities have a high degree of independence. Begin's New Jersey paper illustrates that a strong independent board is an important factor in resistance to centralization at Rutgers, NJIT and NJCMD. This may also be noted in Michigan, Vermont and Delaware.

The traditions of faculty involvement in governance play an important role in resisting the complete homogenization of higher education. In spite of an early flow of literature that seemed to bury these practices under an avalanche of collective bargaining, it is quite obvious that after more than six years of collective bargaining they have displayed an unusual amount of vitality.[5] None of the state narratives show a destruction of the more traditional forms of governance. The higher education "industry" has adapted collective bargaining, as has every other industry, to match its own administrative structure, product and institutional needs, and relationships with unions. The complexities of academic governance and peer judgment have made this a difficult adjustment for some institutions and there are examples of the union taking over some of the traditional governance structures. A few Pennsylvania state colleges have abandoned the senate and other forms of campus governance. But through collective bargaining the faculty now has effective input at the state level. On the other hand, several Massachusetts state colleges have used collective bargaining to establish a campus governance system.

The complexities of governance, collegiality and peer judgment have added a tangle of administrative elaboration to the difficulties of collective bargaining. Institutions without strong traditions of governance and collegiality seem more inclined to negotiate very broad and inclusive contracts. This may be seen more clearly in the community college contracts. Institutions with well-developed governance structures tend to adopt to collective bargaining while retaining much of the governance and collegial structure and procedures. The absence of well-developed governance and collegiality may enhance

[5] James P. Begin, "Faculty Governance and Collective Bargaining: An Early Appraisal, Special Report #5," Washington, D.C.: Academic Collective Bargaining Information Service, March 1974, and James P. Begin and William M. Weinberg, "Dispute Resolution in Higher Education," Society of Professionals in Dispute Resolution Proceeding 1974 (forthcoming).

faculty receptivity to collective bargaining. Most of the institutions now bargaining, like the Pennsylvania and Massachusetts state colleges, did not have traditions of faculty participation in governance and used bargaining to create them.

In my view, the greater the faculty participation in governance before collective bargaining, the more accommodation there is between governance and the contract. The less governance before bargaining, the more the issues of governance and collegiality are replaced by a collective bargaining agreement. So far most institutions have developed the strategy of accommodation rather than replacement, and this has served as an impediment to further centralization.

It also appears that the more bargaining is in the hands of the state, the more difficult it is to develop a viable alternate campus governance system. On the other hand, those institutions that have maintained a high degree of autonomy have also maintained, at least so far, major aspects of traditional governance. This may be seen at Rutgers, NJIT, New Jersey College of Medicine and Dentistry, Delaware, Temple and most of the Michigan institutions. There also appears to be some recognition of the autonomy of the medical centers within the SUNY system. The medical centers are treated differently and negotiate some of their conditions of employment separate from the other institutions in the system.

There is some evidence that directors of offices of employee relations, state budget directors and labor and legislative leaders are coming to regard collective bargaining in higher education as different from their normal labor relations activities. The state directors of OER's roll their eyes heavenward when discussing problems of negotiating with faculty. These officials have not made conscious attempts to destroy traditions of faculty governance and peer review but have tried to balance their own bureaucratic and political needs against the need for preservation of basic academic traditions.

State officials have the difficult task of attempting to establish and maintain a uniform policy within a very large, sprawling complex of diverse agencies. Each of these states is a giant employer. Each must have a well-drawn set of limitations on what will be negotiated and what should be avoided in bargaining. But collective bargaining in higher education does not fit these general policies. One of the preliminary signs of administrative stress was observed in some of the early efforts in collective bargaining by state officials. Certainly the experience of Pennsylvania in negotiating its first state college contract was one that caused state officials to exercise some future caution in dealing with higher education. It was different. It was difficult to bring the college contract into line with other state agencies. It is to the credit of the responsible officials of Pennsylvania that instead of bludgeoning higher education, they decided to work with it on its own terms. A degree of autonomy was given to the secretary of education and liaison was established with the state director of labor relations and his consultants. Bargaining was still centralized, but in the department of education, not the department of administration.

Finally, not all centralization is alike. The negotiation of the contract through the Pennsylvania higher education authorities stimulated faculty participation in systemwide planning. Johnson and Gershenfeld describe the use of collective bargaining to increase faculty input at the system level. This

may be compared to the Massachusetts state colleges being encouraged to explore and adopt governance at the campus level. Centralizated bargaining has generated increased faculty involvement in governance in these two situations.

Summary and Discussion

The fact that these papers concentrate on the centralizing effects of collective bargaining leaves the impressions that unionization causes centralization. The relationship is not that simple. Indeed in some instances centralization is part of the reason why faculties are turning to unions. Garbarino's thesis, that collective bargaining is part of the changing environment of higher education, would appear more accurate. The rise of multicampus systems, the increased size of the higher education enterprise and the declining public faith in the efficacy of higher education as well as collective bargaining have all contributed to more centralized decision making.

Nevertheless, it seems clear that large comprehensive faculty bargaining units have a tendency to homogenize existing differences in faculty personnel policies, salaries and working conditions. Such homogenization raises the question as to whether excellence in research and scholarship can exist and be stimulated under such conditions.

To date very few faculty at the distinguished research and graduate institutions have chosen to unionize. The very notion of excellence in these institutions has been grounded on the foundation of individual and/or differential treatment for demonstrated meritorious performance.

It is difficult to develop and maintain quality performance in graduate study and research if all institutions in the state must be treated uniformly. This is not to say that a spark of quality does not exist within those colleges and universities involved in collective bargaining. But it is to say that the Madison campus of the University of Wisconsin would be greatly altered if it dealt with all its problems in the same terms that are applied to all state institutions in Wisconsin. The same observation may be applied to Rutgers, the University of Pittsburgh, Penn State, Temple, the Amherst campus of the University of Massachusetts, Berkeley, U.C.L.A., the University of Michigan and Ohio State to cite a few examples.

Collective bargaining in higher education is primarily a phenomenon of community colleges and four-year institutions, not of the research-graduate centers. The organized state colleges are more typical of the institutions in collective bargaining. The research-oriented faculty, who are deeply involved in self-governance, will find it difficult to swap the comfortable, tangible controls of an oligarchy for the uncertainties and hurly-burly of democracy grounded in collective bargaining.

Finally, it would appear appropriate to summarize the factors that are associated with the degree of centralization and/or homogenization that occurs under collective bargaining. We take the form of stating these factors as six propositions that we believe to be accurate but may need further confirmation. The propositions are interrelated and should not, therefore, be treated independently.

1. The more highly placed within the state bureaucracy the office of employee relations, the more power within the office, and the more pressure for centralization and state control. Those states with no central state apparatus for state employee bargaining have the most decentralized relationship with higher education administration: Michigan, Ohio, Delaware. In situations where the state is defined to be the employer, institutional governing boards and administrators tend to lose a degree of their previous authority. In cases where systemwide boards or administrators are the employer, campus officials are relegated to advisory and/or consultative administrative roles on those issues within the scope of the contract (e.g., New York and the Pennsylvania and New Jersey state colleges). Whatever control campus officials retain over these items is based on influence rather than authority relationships.

2. The broader and more comprehensive the bargaining unit, the greater the degree of leveling and/or homogenizing associated with collective bargaining. The inclusion of nonfaculty titles in faculty units is associated with demands to extend faculty benefits to other members of the unit. The inclusion of two-year college faculty in units with more research-oriented university faculty tends to produce extensive demands to "level out" faculty benefits since traditional peer judgments are not as important to a community college as they are to a research community.

3. The broader the scope of the contract, the greater the centralizing tendencies of collective bargaining. The centralizing potential of bargaining has been somewhat neutralized in SUNY and Hawaii because of the narrow scope of those contracts. The broad scope of the Pennsylvania State College and University and Massachusetts State College contracts has heightened the centralization potential of bargaining.

4. The degree of centralization under collective bargaining is strongly influenced by the prebargaining structure and degree of centralization. Bargaining appears to have little impact on the structure of higher education. Those states with strong state government involvement or systemwide governing boards tend to centralize bargaining responsibility in those boards. Those states with strong traditions of decentralized authority and/or high degrees of autonomy tend to reflect these traditions in their bargaining relations.

5. Collective bargaining brings the specific issues of faculty salaries, fringe benefits and personnel policies to the attention of state executive officials and legislatures. The degree of subsequent centralization has varied. In some cases legislatures have to ratify certain aspects of the contract and in a few cases (e.g., Alaska) they have done so reluctantly. Many state officials have specifically refused to negotiate any faculty benefits that are not granted to all of the state's public employees. In New York, New Jersey, Pennsylvania, Massachusetts and Hawaii, faculty economic increases are tied to those given other public employees.

6. The degree of centralization is directly related to the strength of faculty involvement in governance at the campus level. There seems to be a tendency to let local mechanisms continue to handle issues where both parties perceive these mechanisms to have been effective in the past. State and systemwide officials on both sides are reluctant to centralize matters that local parties agree are functional, so long as they are consistent with the master agreement.